









# **CIVIL RULES AND ORDERS**

**FOR THE GUIDANCE OF**

**CIVIL COURTS AND OFFICERS SUBORDINATE  
TO THE HIGH COURT OF JUDICATURE  
AT FORT WILLIAM IN BENGAL**

**VOLUME III—Forms, etc.**

**ISSUED BY THE**

**AUTHORITY OF THE HIGH COURT (APPELLATE SIDE)**



# PREFACE

The importance of recent legislative changes, the numbers of amendments in rules and procedure and above all the publication of the report of the Civil Justice Committee since the last edition of this work appeared in 1918, had long served to emphasise the need for a thorough revision of both volumes of the Court's Civil Rules and Orders. It was not however till the middle of 1932 that the services of a member of the Bengal Civil Service (Judicial) were placed at the disposal of the High Court, to work as a Special Officer under the Registrar of the Appellate Side for the purpose of this revision.

In June of that year Mr. S. C. Sarkar, then a Munsif with long experience of administering civil justice in the mofussil of Bengal, embarked on what turned out to be a task of far greater magnitude than could have been anticipated before it was attempted. Each of the existing rules of the Calcutta High Court, together with those of all the other High Courts and the recommendations of the Civil Justice Committee had to be examined in detail and the whole had to be brought into line with the Codes and Laws which it is the business of High Court rules to amplify and explain. The result has been a book which bears little resemblance in form or contents to its predecessor. The comprehensive and radical character of the revision work of nearly three years will be found largely in the introduction in Volume I of numerous rules tending to improve the administration and the rescission of obsolete ones, and in the addition, modification, simplification and deletion of certain forms in Volume II, undertaken with the same end in view.

Many of the defects which have been brought to light by inspection reports of recent years are sought to be removed by the changes which many of the rules have undergone. At the same time it was felt that there were certain aspects in the administration of civil justice which demanded something more expansive and less formal than what can be easily cast in the form of a rule. The result has been the almost simultaneous publication of a short manual called "The Civil Suit Instructions Manual," the contents of which should be read and applied side by side with the present Volume which has been given the shorter title of "Rules and Orders (Civil)". In both publications the experiment has been tried of continuous numbering in one consecutive serial from beginning to end, and it is hoped that in this way reference to their contents will be simplified. Reference to the number of the rule or sub-rule and (if necessary) the particular clause in question should be sufficient.

The Accountant-General, Bengal, has been consulted in regard to the modifications in the account rules and forms.

The General Index has been rewritten and made more exhaustive. This edition of the Civil Rules and Orders is issued in supersession of the rules issued in the year 1918 and subsequent thereto.

This edition has been prepared under the supervision of the Hon'ble Mr. Justice R. E. Jack.

As the officer entrusted with the work of revision, I place on record the very great assistance I have received during these 2½ years from Mr. Sarkar, to the extent of whose knowledge and application every page of these volumes bears evidence.

HIGH COURT :  
*March, 1935.*

N. L. HINDLEY,  
*Registrar.*

I gratefully acknowledge the invaluable help and advice so cheerfully and ungrudgingly given at all stages of the work by Mr. N. L. Hindley, M.A., I.C.S., whose tenure of office as Registrar of the High Court is associated with the introduction of many reforms in various branches of the administration of civil justice. The task of overhauling and rewriting the Civil Rules and Orders in the comprehensive manner indicated in the Preface would have been impossible of accomplishment without his encouragement, active help and co-operation. Every possible facility was offered to me and all the old files, reports, original papers, etc., etc., in the High Court were placed at my disposal.

It is known too well that there must necessarily be some imperfections in a book which covers so large a field. The work however represents a sincere attempt to improve the administration and procedure by production of a useful book.

S. C. SARKAR,  
*Special Officer.*

## PREFACE

The last edition of the Civil Rules and Orders, consisting of two volumes, was published in 1935. Since then, there had been numerous amendments, necessitated by changes in the procedural statutes as also by changes brought about by the Constitution of India. In consequence of such amendments and the large number of correction slips issued, the book had become extremely unwieldy and very inconvenient to handle. Moreover, the stock of the book was exhausted. For these reasons, it was found necessary to bring out a revised edition.

The occasion for bringing out a revised edition provided an opportunity for making a thorough re-examination of the rules. Accordingly, a re-examination was undertaken and several further amendments were suggested in course of the revision which were subsequently adopted by the Court. The present edition incorporates all amendments made to the rules since the last edition, whether made prior to or in course of the revision.

An acknowledgment is due to the former Assistant Registrar, Shri Tarapada Mukherjee, for his undertaking the work of revision of the rules in addition to his normal duties. An acknowledgment is also due to Shri Kanai Lal Mukherjee, Head Assistant, for his careful work in preparing the manuscript, re-writing the index and table of contents and examining the proofs of the final print.

On account of the existence of two systems of coinage, figures given in the rules and forms in terms of the old system have not been changed. They may, however, be converted into corresponding figures under the decimal coinage system with the help of the official conversion table.

K. C. SEN,  
*Registrar, Appellate Side.*

HIGH COURT, CALCUTTA :  
*Dated the 15th June, 1958.*

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# CIVIL RULES AND ORDERS OF THE HIGH COURT, CALCUTTA

## Volume III.

### PART I.—Rules Relating to the Civil Procedure Code

#### CHAPTER 1

#### COURT-HOURS, CAUSE LISTS, PLEADINGS, PETITIONS, ETC.

##### 1. GENERAL.

1. (1) The ordinary hours of sitting for all Courts shall be 10-30 a.m. to 4-30 p.m. (Indian Standard Time).

(2) There shall ordinarily be an interval (not exceeding half an hour) at about 2 p.m. or 8-30 a.m. in the case of morning sitting.

(3) Courts may close at 2 p.m. on Saturdays, if the state of the work permits.

(4) In hot weather, i.e., between the 15th March and the 30th June

##### Page 1, Rule 1(4)—

Insert the words "and at Arambagh in the district of Hooghly" after the word "Midnapore", in line 4.

[No. 1 dated the 15th June, 1958, Circular Order No. 1 (Civil) of 1957.]

offices  
districts  
their  
districts  
day,  
High  
hours

each day when Courts are held in the morning.

NOTE.—In places where morning sittings are being held in April, the ordinary hours of sitting [vide sub-rule (1) of this rule] shall be observed on the particular day in that month when *tamadi* filings take place.

(5) Judicial officers shall not close their Courts even for half a day except on the days indicated in the List of Holidays prescribed under section 15 of the Civil Courts Act, 1887, without the previous permission of the High Court. In cases of emergency instructions in General Letter No. 13 of 1935 should be followed.

2. Administrative or departmental work should be done either before the sitting, or after the rising hour, or after the disposal of the day's judicial work on the Bench, should it occur earlier. On days when the administrative work to be done is heavy, presiding Judges may rise half an hour earlier for the purpose.

3. The presiding Judge shall insert in the Diary [Form No. (R) 12] with his own hand (i) his hour of arrival in office, (ii) the hour at which he takes his seat for judicial work, (iii) the hours between which administrative work is done, and (iv) the hour of rising.

4. The working hours in every judicial office shall ordinarily be from half an hour before, till half an hour after, the sitting hours as fixed by rules 1(1) and 1(4).

NOTE.—The Attendance Register should be submitted punctually at 10-35 a.m. or 3-35 a.m., as the case may be, to the Sheristadar, who should note in red ink the fact of any officer's late attendance. The Attendance Register should be laid every day before the presiding Judge for his signature.

5. No judicial work (*ex parte* or otherwise) involving trial of cases or hearing of petitions shall be done in chambers or at the residence of judicial officers.

NOTE.—See however rule 969.

6. Without the consent of parties, and in the absence of urgent necessity, no civil trial should proceed on Sundays or gazetted holidays:

Provided that on such days, the Court shall not refuse to do any act or make any order urgently required which may with propriety be done or made out of Court.

7. The District Judge may direct that during the Christmas holidays or Puja holidays, a special officer with sufficient pecuniary jurisdiction shall deal with applications for execution of decrees which are extremely urgent in their nature and that such decrees be transferred for execution to such officer's file immediately before the closing of the Courts for the holidays by the Courts which passed them.

8. Plaints, memoranda of appeals, original petitions and applications for execution of decrees must be presented during the Court hours specified in sub-rules (1) and (4) of rule 1:

Provided that on the *tamadi* day in the month of April, the presiding Judge, may, for sufficient reason, to be recorded in writing, keep the Court open till any hour up to 6 p.m. but in no circumstances beyond that hour.

9. A diary in the prescribed form No. (R) 12 to be called the "Diary of the Court of.....at....." shall be maintained by each Civil Court in the following manner:—

(1) Each case fixed for any day shall be entered *in advance* immediately upon a date or adjourned date being fixed, each such entry showing the purpose for which it is set down on each date.

NOTE.—The purpose should be indicated by suitable headings written in red ink, e.g., for—Filing deficit Court-fee, etc., Final disposal at first hearing, Ascertaining whether suit will be defended, Filing written statement, Settlement of issues, Compliance with orders regarding discovery, admission, etc., Investigation of pauperism, Substitution of heirs, Compromise, Hearing of interlocutory application (state nature), Commissioner's report, Filing award, Settling the final or peremptory date of hearing, Peremptory hearing, Argument, Judgment, Orders, etc., etc.

When fresh summonses have to be issued for non-service, death of party or other reasons, such cases are to be entered under the heading "For issue of process" or "For appearance of defendant" as the case may be.

(2) The topmost heading should be "For peremptory hearing" and under each heading should be grouped separately each class of cases in their chronological order according to the dates of their institution.

NOTE.—In determining the age of a case, no account should be taken of the date of its restoration or receipt on remand or by transfer.

(3) Appeals and Miscellaneous cases should also be shown in the Diary in the above manner. Execution cases should be noted last of all, also arranged according to their class and in chronological order.

(4) The Diary will be so arranged as to mark a clear division between defended and undefended cases. Cases on the undefended list should also be shown under suitable headings as above grouped separately class by class and arranged in their chronological order.

NOTE.—When a defendant fails to appear on the first date fixed and service of summons is proved, the case, if not disposed of for any reason on that date, will go to the undefended list of the adjourned date in the Diary.

(5) Progress made in each case shall be shown briefly under each date, as also the reason for adjournment and at whose instance.

(6) The number of witnesses examined in each case shall appear in the appropriate column.

(7) A running total in red ink shall be inserted from day to day with the object of showing the total number of witnesses examined during each quarter of the year, a new serial number for them being started at the beginning of each quarter.

(8) An officer who on any day performs criminal duties in addition to his work as a civil judicial officer, shall note in the Diary for that day how his time has been distributed between these two classes of work, fractions below one quarter of a day being disregarded. Portions of days employed on revenue work shall be similarly shown, except that in non-regulation districts, days spent on tour shall be credited to revenue alone.

(9) The presiding Judge shall insert with his own hand in the appropriate place the hours of attendance, etc., as required by rule 3 and the hour of sitting or rising, if unusually late or early on any day, shall be accompanied by a short note, explaining the reason for such late or short sitting.

(10) The Diary shall be signed each day by the presiding Judge after a careful scrutiny on completion of all the entries therein.

NOTE.—All the above instructions contained in the clauses of this rule are intended to be most rigidly followed and are not to be allowed to be reduced to a formality. In particular, details required by sub-rule (9) (*vide* rule 3), shall be representative of actual facts.

72. (1) A Daily Cause List in the prescribed form No. (M)2 shall be maintained in every Court in the form of a register and laid at some conspicuous part of the Court-room for the inspection of all concerned, not later than 12.30 p.m. (or 8 a.m. in the case of morning sittings) on the working day preceding that to which the Cause List relates. Cases and appeals shall be shown in the order in which they appear in the Diary. Judgments ready for delivery shall be notified on the Cause List for the day. Execution and Miscellaneous cases may be shown in the same list or separately. For the purposes of the Cause List, a case is sufficiently indicated by its number, year and class.

(2) At the close of the day, entries should be made in the Daily Cause List showing in addition (a) the results of all cases disposed of, (b) dates or adjourned dates fixed during the day of cases not disposed of, and (c) any order requiring specific action.

NOTE 1.—The Cause List shall be prepared in English.

NOTE 2.—The list shall bear the signature of the presiding Judge whose duty it is to see (1) that the list is laid at some conspicuous part of the Court room, with column 1 filled in, not later than the hour fixed in the rule on the day preceding that to which the list relates and (2) that proper entries are made in columns 2 and 3 of the list at least half an hour before he leaves Court on the day to which the list relates.



**11.** A Register in the prescribed Form No. (R)37 shall be maintained in every Court showing the processes, process-fees and other costs due from the parties and the latest date of filing. It shall be daily written up by the clerks concerned and signed by the presiding Judge below the last entry for each day and laid at some conspicuous place in the Court-room between the hours of 12-30 and 4-30 p.m. (or 8 and 11 a.m. in the case of morning sittings) for inspection by parties or their pleaders.

**12.** For sealing judgments, writs, decrees, processes, sale-certificates, certificates of non-satisfaction of decrees and copies, etc., the regular seal of the Court shall be used by all judicial officers. In any other connection, smaller seals as supplied should be used.

**NOTE 1.**—The utmost care is to be exercised over the custody of the above and of all other seals in the possession of a Court, including the date seal.

**NOTE 2.**—The use of name seals whether of judicial or of ministerial officers is prohibited.

**13.** Any document or proceeding required to be presented to or filed in Court, if sent by post, shall be returned with a note of the reason for returning it. A document not so required to be presented or filed may, if sent by post, be accepted by the Court in its discretion.

## 2. PLEADINGS, PETITIONS AND AFFIDAVITS.

### A.—Pleadings, Petitions, etc.

**14.** All pleadings, memoranda of appeals, original petitions, affidavits, *vakalatnamas*, applications and papers of a similar character presented to the Court shall be—

(1) written, type-written or printed fairly and legibly on foolscap watermarked paper, known as “pie” or “cartridge” or “demi” paper, obtainable from the Treasury and sold by all licensed stamp vendors, one side of the paper only being used and a quarter margin together with at least one and a half inches of open space being left at the top and bottom of each sheet;

**NOTE.**—Pleadings and other papers which are written illegibly or cannot be easily read should be returned to be written legibly [G. L. No. 13 of 1919 and G. L. No. 3 of 1931.]

(2) dated and signed by the pleader, and entered in the List of Addenda et Corrigena to the Civil Rules and Orders.

Volume I.

No. 53.

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in such a

**Rule 14(3)—**

substitute “851” for “850” in line 2 of Note to the rule.

o. 53, dated the 27th November, 1963. File No. 4R—25 of 62.

(i) the name of the street, lane or section and number of the house (if any);

(ii) the name of the town or village;

(iii) the post office;

(iv) the district; and

(v) the munsifi (if in West Bengal) or the district Court (if outside West Bengal).

pleading  
all state

16. All petitions requiring judicial investigation or determination unless filed with an affidavit in support thereof, should be verified in the manner prescribed by Or. 6, r. 15.

17. Every interlineation, erasure or correction in a petition or pleading shall be initialled by the party or recognised agent or pleader presenting it. In the case of an affidavit, such authentication shall be made by the initials of the Commissioner concerned. Numbers should be expressed in figures, and when Indian dates are given in any pleading, petition, affidavit, etc., they should ordinarily be followed by the corresponding English dates.

18. (1) In every pleading, petition, etc., names of parties should bear consecutive numbers and a *separate line* should be allotted to the name and description of each person.

(2) These numbers should not be changed, and in the event of death of a party during pendency of the suit or proceeding, his heirs or representatives, if more than one, should be shown by sub-numbers. Where fresh parties are brought in, they are to be numbered consecutively to the plaintiffs or defendants, as the case may be, already in the suit. Where any party whose name is entered in the register of suits dies or fresh parties are added, the necessary correction should be made in the

#### No. 54.

5, Rule 19—

person  
khtear

Read "851" for "850" in line 2 of Note to the rule.

[No. 54, dated the 27th November, 1963. File No. 4R—25 of 62.]

adings,

20. (1) Petitions containing argumentative matter (*e.g.*, quotations and discussions of the effect of certain sections of Acts, or of certain rulings of the High Courts, etc., etc.), or things which are irrelevant to the matter in hand should be returned to applicants without any order except an endorsement that the application is returned for non-compliance with the provisions of this rule.

(2) Applications in regard to distinct subject-matters shall be made in separate petitions.

(3) A petition must not contain more than one prayer or one series of alternative prayers of the same-kind.

(Illustration.—Application may be made by one petition for warrant of arrest against a recusant witness or a proclamation for his appearance or a notice to show cause against fine for non-appearance, but not for local investigation, or a commission to examine a witness; or for amendment of plaint.)

(4) An original petition shall in addition to the particulars required by law also state the Act and section or rule or other authority under which it is presented.

(5) Every interlocutory application or petition filed in a suit or proceeding valued at Rs. 50 or less shall display clearly, preferably in red ink, the fact that it is so valued by a note to that effect in its top left hand margin, in order to enable a proper check to be made of the court-fee paid.

21. In contested original suits, no written statement, list of documents, or application which the Judge may consider material, shall ordinarily be filed unless copies thereof have previously been served on the pleader for each set of parties whose interests are not joint. Provided that if, for any

reason, copies cannot be so served, they may be filed in Court together with the original written statement, list or application. Pleadings served with such copies shall give a receipt on the original written statement, list or application. The copies shall be authenticated by the signatures of the pleaders of the parties on each page on the bottom left-hand margin.

22. It should be clear in every plaint how the valuation has been calculated. Where this is not so or where it appears to the officer receiving and examining the plaint that there is manifest undervaluation, the plaint shall be placed before the presiding Judge for orders.

23. Written statements and petitions in suits or cases fixed for the day must be filed at least within fifteen minutes of the time fixed for the sitting of the Court in rules 1(1) and 1(4), and all other petitions and documents by such hour, not beyond 11-30 a.m., as may be fixed by the Court, except papers the occasion for the filing of which arises during the trial. Petitions and documents presented after the prescribed hour shall not be accepted unless good cause is shown for the delay.

24. Petitions should always be taken in open Court, and usually at the commencement of the daily sitting of the Court. The majority of petitions can be disposed of by an order passed in Court as soon as they are filed. Where a reference to the record or to other papers is necessary before an order can be made, petitions should, unless they are of an exceptionally urgent nature, be brought up with such record or papers on the following open day and order should then be passed in Court.

### B.—Affidavits.

25. All Sheristadars shall be *ex-officio* Commissioners of affidavits in respect of matters and causes arising within, and subject to the jurisdiction of, the respective Courts in which they are employed.

NOTE.—In single munsifs during the temporary absence of the Sheristadar the next seniormost ministerial officer shall be *ex-officio* Commissioner until the return of the Sheristadar to duty, unless the Court otherwise directs.

26. (1) Every affidavit to be used in a Court of Justice shall be entitled "In the Court of.....at....." naming such Court.

(2) If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it must also be entitled in the cause.

(3) If there be no cause in Court, the affidavit shall be entitled "In the matter of the petition of.....".

27. Every affidavit shall be drawn up in the first person and divided into paragraphs, numbered consecutively, and each paragraph, as nearly as may be, shall be confined to a distinct portion of the subject.

28. Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such manner as shall serve to identify him clearly; and where necessary for this purpose, the affidavit shall contain his full name, age, father's name, profession or trade and true place of residence, and shall be subscribed either with his signature in his own hand or his finger-impression.

**29.** Unless it be otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to. Two or more persons may join in an affidavit; each shall depose separately to those facts, which are within his knowledge, and such facts shall be stated in separate paragraphs.

**30.** When the declarant in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words "I affirm" (or "make oath") "and say."

**31.** Every affidavit should clearly express how much is a statement of the declarant's knowledge and how much is a statement made on his information or belief and must also state the source or ground of the information or belief with sufficient particularity.

**NOTE.**—In affidavits under Or. 32, r. 3(f), the officer before whom such affidavits are sworn should see that the words "and that he (she) is a fit person to be appointed" are always inserted. [G.L. No. 13 of the 6th April, 1932].

**32.** (1) When a particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant must use the expression "I am informed" and, if such be the case, should add "and verily believe it to be true", and he must also state the source or ground of the information or belief, and the name and address of, and sufficiently describe for the purpose of identification, the person or persons from whom he received such information. When the statement rests on facts disclosed in documents or copies of documents, procured from any Court of Justice or other source, the declarant shall state what is the source from which they were procured and his information, or belief, as to the truth of the facts disclosed in such documents.

(2) Documents in the possession of the deponent or his principal (other than those on the records of the case) referred to by affidavit shall be annexed to the affidavit and marked in the same manner as exhibits admitted by the Court and shall bear the certificate which shall be signed by the Commissioner before whom the affidavit is made.

**NOTE.**—*Ammukhtarnamas* of persons signing on behalf of the parties are exempted from the provisions of clause (2) of this rule.

**33.** Except under the special orders of the Court, no document being an exhibit to an affidavit or verified petition or the materials for any application shall be given back unless the document be an original document, in which case it may be taken back on an order of the Court, a certified copy being retained.

**34.** Every person making an affidavit, if not personally known to the Commissioner, shall be identified to the Commissioner by some one known to him, and the Commissioner shall state at the foot of the affidavit (a) the name and description of the person identifying, and (b) the time and place of the making of the affidavit. He shall also, for the purpose of identification, mark and initial any exhibits referred to in the affidavit.

**35.** Where the declarant is a *pardanashin* woman, she shall be identified by a person to whom she is known and before whom she is accustomed to appear unveiled and such person shall at the foot of the affidavit certify that the declarant was identified by him and sign his name thereto, and shall also prove such identification by a separate affidavit.

**NOTE.**—The affidavit of identification is exempt from Court-fee, *vide* rule 602(e)(iv).

**36.** (1) The person before whom any affidavit is about to be made shall, before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if

such person states that he has not read the affidavit, or appear not fully to understand the contents thereof, or appear to be blind, illiterate or ignorant of the language in which it is written, the Commissioner shall read and explain, or cause some other competent person to read and explain in his presence, the affidavit to the person proposing to make the same in a language which both he and the Commissioner understand.

(2) When an affidavit is read, translated or explained as herein provided, the Commissioner shall certify in writing at the foot of the affidavit that it has been so read, translated or explained in his presence and that the declarant seemed perfectly to understand the same at the time of making the affidavit and made his signature or finger impression in the presence of the officer; otherwise the affidavit shall not be used in evidence.

37. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous and may order the costs of any application to strike out such matter, if granted, to be included in the costs payable by the offending party.

38. In administering oaths and affirmations to declarants, the Commissioner shall be guided by the provisions of the Indian Oaths Act, X of 1873. The provisions of rules 330 and 331 apply, *mutatis mutandis*, to affidavits under the present rules, and the following forms are to be used:—

### *Oaths.*

I swear that this my declaration is true, that it conceals nothing, and that no part of it is false. So help me God.

### *Affirmation.*

I solemnly declare that this my declaration is true, that it conceals nothing, and that no part of it is false.

39. The following forms of affirmation and certificate shall be used by the Commissioner appointed to administer oaths or affirmation:—

#### *(1) Affidavit on solemn affirmation.*

##### *(Cause title.)*

I, A.B., son of O.D., and a Hindu of the.....caste, of..... years of age, (state occupation) residing at.....do solemnly and sincerely affirm (or make oath and say) as follows:—

- 1.
- 2.
- 3.

Solemnly affirmed [or sworn] at the office of [the Court]  
of the Munsif of.....] this..... day of.....19.....

at [state hour] before me.

(Signed) A.B.

(Signed)

*Sheristadar of the said Court.*

(2) *Certificate under rule 36 when declarant is unacquainted with the language of the affidavit, or is blind or illiterate.*

Solemnly affirmed [or sworn] at the office of [the Court of the Munsif of.....] this.....day of.....19..... at [state hour] before me, the contents of this affidavit (or solemn affirmation) (and the exhibits therein referred to) having been first truly and audibly read over to the declarant in Bengali, he being illiterate or unacquainted with English (or being blind), who appeared perfectly to understand the same, and made his finger impression thereto (or signed the same) in my presence. } (Signed) A. B.

The declarant is personally known to me or identified by (state name and address) who is known to me. }

(Signed)

*Sheristadar.*

(3) *Certificate under rule 32 to be endorsed on an exhibit to an affidavit.*

(Short cause title.)

This is the exhibit marked "A" referred to in the affidavit of A. B. sworn (or affirmed) before me this.....day of.....19.....

(Signed)

*Sheristadar.*

**40.** No affidavits shall be shown before any Commissioner after 12 noon without the order of the Court.

## CHAPTER 2

### PRESENTATION, REGISTRATION, ETC., AND EXAMINATION OF PLAINTS

**41.** An order appointing an officer to receive complaints under Or. 4, r. 1(I) must be in writing.

**NOTE.**—This rule applies also to memoranda of appeal [Or. 41, r. 1(I)].

**42.** Every complaint brought for presentation shall have affixed to the top left hand corner of its first page, a slip of paper in the following form with the particulars required written on it excepting the filing number which should be left blank:—

No.....
Class of suit.....
Plaintiff.....
Defendant.....
Value of suit.. ..
Pleader.....

**NOTE.**—It should be particularly noted that additions made by the High Court to Schedule 1 of the C. P. Code require that every complaint shall be accompanied by the necessary number of its copies, draft forms of summons, and fees for the service thereof (Or. 7, r. 9 (1-A)), and a statement of the party's address for service (see rule 15 and Or. 8, r. 14-A).

**43.** (1) Immediately on receipt of a complaint, a serial (consecutive) number shall be marked on it, to indicate the sequence of filing, the same number being simultaneously noted on the attached slip of paper. The slip shall then be detached, stamped and made over to the person presenting the complaint, then and there. These numbers shall be quoted in all papers that may be filed hereafter in connection with the complaints so long as they are not registered.

**NOTE.**—All complaints shall be marked with the serial numbers of filing on the same day they are filed and the slips attached shall be delivered forthwith. If on account of unusually heavy filing on any *tamadi* day it is not possible to make over all the slips of paper within the closing hour prescribed in rule 8, those that are left must be distributed on the next following working-day and the presiding Judge should see that it is done in his presence.

(2) All such complaints shall be entered at once in the prescribed register No. (R)\*12-A called the Filing Register in the order in which they have been filed.

**NOTE 1.**—On account of the heavy filings on the *tamadi* day, registration generally takes much time and the object of the Filing Register is to keep an *interim* record of all complaints filed in Courts. All complaints must be entered in this register on the day they are filed, except that entry of complaints filed on the *tamadi* day shall not ordinarily take longer than four days.

**NOTE 2.**—A separate volume shall be opened for each class of suit, from the beginning of January each year. The number in the Filing Register will be the same as the number in the General Register of Suits.

44. All complaints presented must, on being received, be registered (*i.e.*, entered in the Register of Suits) in the same order as they appear in the Filing Register, irrespective of their possible rejection (under Or. 7, r. 11) or return (for amendment or presentation to proper Court).

45. (1) Every complaint shall ordinarily be registered on the day it is received and should it be found impossible, for any reason, to register it within 24 hours of its receipt, the fact shall be reported to the presiding Judge of the Court concerned.

(2) In view of the fact that a large number of complaints is filed on a single day in a year at *tamadi* time, it will be open to the presiding Judge by an order in writing to fix such reasonable period after completion of the Filing Register, as may be necessary for registration of all complaints filed on this occasion.

NOTE 1.—Presiding Judges should fix the number of complaints to be registered every day and watch regularly the progress of work, so that registration of all *tamadi* complaints may be completed, within the shortest possible time.

NOTE 2.—Simultaneously with the registration of a complaint and the fixing of the first date, the suit should be entered in advance in that day's page of the Diary of the Court under the heading appropriate to the purpose for which the first date is fixed.

46. As soon as possible after registration of the complaint, the first date fixed for the suit and the purpose for which it has been fixed shall be entered in columns 5 and 6 of the Filing Register [Form No. (R) 12A].

47. The first dates fixed for appeals and all petitions (excluding execution petitions) that require registration shall be entered in a register in Form No. (M)1—Daily List. Entries shall be made therein from day to day, until the form is exhausted. If the same register is used for miscellaneous cases, appeals, etc., they should be grouped separately under the different heads. The presiding Judge shall put his dated signature below the last entry for each day. The register shall be laid at some conspicuous part of the Court room every day by the sitting hour for inspection by the parties and the pleaders.

NOTE.—Form No. (M) 1—Daily List of Petitions and Appeals registered—shall be destroyed after three months.

48. The date of filing shall be stamped on a complaint as soon as it is filed.

49. (1) On presentation or receipt of a complaint, the Sheristadar of the Court shall examine it in order to find out whether all the requirements of law have been complied with. This examination should be particularly directed to ascertaining, among other things—

- (i) whether the complaint bears full court-fee stamps in accordance with the valuation put upon it;
- (ii) whether it has been properly signed and verified (Or. 6, rr. 14 and 15);
- (iii) whether it complies with the requirements of Or. 7, rr. 1, 2, 3, 4, 6, 7 and 8;
- (iv) whether in the case of recovery of rent under the Bengal Tenancy Act, 1885, or the Cooch Behar Tenancy Act, 1910, the provisions of sections 148(b), (c) and (d) of the former Act or sections 40(b), (c) and (d) of the latter Act, have been complied with;



- (v) whether it is accompanied by the necessary copies of plaint and process-fees and draft forms of summons [amended Or. 7, r. 9 (1-A)];
- (vi) whether the documents attached to the plaint (if any), are accompanied by a list in the prescribed form [Or. 7, r. 9 (1), see also r. 9 (4)];
- (vii) whether it is accompanied by the party's address as required by Or. 6, r. 14-A and contains the necessary particulars (*vide* rule 15);
- (viii) whether in the case of minor plaintiffs and defendants the requirements of Or. 32, rr. 1 and 3 have been complied with and the necessary application supported by an affidavit verifying the fitness of the proposed guardian *ad litem* of the minor defendant(s) has been filed;
- (ix) whether the suit is within the pecuniary and territorial jurisdiction of the Court;
- (x) whether the *vakalatnama* has been properly accepted and endorsed by the pleader [*vide* rule 862, and in particular, sub-rule (5) of the rule], and whether in the case of illiterate executants, the provisions of rules 861 and 862 (3) have been complied with.

(2) The officer examining the plaint is required to certify on the top left hand margin of the first page of the plaint the sufficiency or otherwise of the stamp borne and to note the amount of deficiency, if any. A second certificate is to be appended if and when the deficiency is collected.

(3) The officer examining the plaint should refer to the presiding Judge if he thinks that it should be returned or rejected for any reason. It will then be for the Judge to deal with the matter.

## CHAPTER 3

### SERVICE OF PROCESSES AND WORK IN THE NAZARAT

#### 1. PROCESSES AND THEIR SERVICE.

##### A.—General.

**50.** In every process and order (of whatever description) issued by a judicial officer, for whatever purpose it may be issued or made, the name of the district and of the Court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such a manner that they may be easily read.

**51.** All processes, notices, copies of complaints, and other documents filed in Court (with the exception of exhibits) shall be written or typed on durable paper of foolscap size. If carbon copies are filed, they must be distinct and legible.

**NOTE.**—As to paper for pleadings, petitions, etc., see rule 14(1).

**52.** The hour of attendance to be entered in every summons or process issued by a Court shall be 5-30 a.m., or 10 a.m., as the case may be, unless the Court otherwise directs.

**53.** When the question of requiring *de carrière* and honorary foreign consular officers to attend Court as witnesses arises steps may be taken to minimize any inconvenience that may be felt by them by fixing a time convenient to them for recording their evidence, or where it will appear to the Court that personal attendance will occasion inconvenience to them, by issuing a commission when it is applied for.

**54.** The summons issued to a registered medical practitioner, should state for his attendance the time when the Court concerned expects to be in a position to examine him; and his examination should take place at the time indicated in the summons or as soon thereafter as practicable so as to interfere as little as possible with his professional work.

**55.** Processes should ordinarily issue in the language of the Court; but where processes are sent for service to a Court where the language is different, they should be accompanied by a translation into the language of such Court or into English, certified by the transmitting Court to be correct. Where the return of service or report stating the reason for non-service is in a language different from that of the issuing Court, it shall be accompanied by an English translation similarly certified.

**56.** Processes issued to Europeans and Anglo-Indians should be in English.

**57.** Persons on whom processes are to be served or executed shall be described in as full a manner as possible so as to identify them clearly, *i.e.*, by a statement of name, father's name (if possible), occupation, address and such further particulars as will facilitate identification and service.

**NOTE.**—In the case of service or execution of processes in Presidency or other large towns, the name of the street, lane or section and the number of the house (if any), should be given.

**58.** (1) With their applications for issue for processes, parties shall file process-fees wherever necessary under the law and the required number of printed forms filled up in a bold, clear and easily legible handwriting, leaving date of appearance and of issue of process blank. Such forms are available free on application to the officer appointed by the Court.

**NOTE.**—Every application for issue of summons to witnesses shall state clearly whether it is to be served by the party himself or through the agency of the Court. As all summonses to witnesses are ordinarily to be made over for service first to the party applying therefor, a party praying for service by the Court shall state the special circumstances necessitating such mode of service [Or. 16, r. 7-A(ii)].

(2) The parties or their pleaders shall sign legibly all processes, notices, etc., in the left bottom corner, and will be held responsible for the accuracy of the information entered therein.

(3) When orders for the issue of process are passed by the Court, the date fixed for appearance will be inserted in the form and the process will be dated by an officer of the Court before the processes are signed.

(4) The presiding officer may, in his discretion, direct in any particular case that the forms of process be entirely filled up in the office of the Court.

**59.** A party who desires the attendance of any witness before the Court, or a Commissioner appointed to take evidence, shall file a list of the persons whose attendance he requires, stating the full name, residence and occupation or description of each person and whether he is required to give evidence as an expert or otherwise or to produce any document, and in the latter case, specifying the date and description of the document so as to identify it. In the case of a witness who has to be served through Court, he shall with such list also deposit in Court the prescribed fees for service of summons and the total amount of the other expenses to which the said person is entitled and in the case of an expert or scientific witness his compensation as determined by the Court.

### **B.—Service and Execution of Processes.**

**60.** All summonses and processes, other than warrants of arrest, warrants of attachment of movable property and processes, copies of which are required by law to be affixed at the Court house of the issuing Court, issued by the Courts at district headquarters or by the High Court, which have to be served within the jurisdiction of the outlying munsifs in the district, shall be forwarded by the office to the Courts of the Munsifs concerned and not ordinarily served by peons from district headquarters. The outlying Courts will have the processes served through their respective process-serving establishment and return the same direct to the issuing Courts.

**61.** The presiding Judge of any superior Court may for sufficient reason direct on the application of the party applying for any particular process, which should ordinarily be sent for service to an outlying Court, that it be served or executed by a special process-serving peon from headquarters.

**62.** A summons issued under Or. 5, r. 21, shall ordinarily be sent to the Court of the Munsif within whose jurisdiction the person to be served resides, with a covering letter or an endorsement signed by the presiding Judge.

### C.—Method and Proof of Service.

**63.** The signature required under Or. 5, r. 16, should in the case of illiterate persons be held to mean the thumb impression. Process-serving peons out on duty, should therefore be supplied with printer's ink, etc., for taking such impressions.

**64.** (1) A party shall not ordinarily be required to supply an identifier for the purpose of serving a summons or notice or any other process on a defendant, respondent, witness or other person whether issued by any subordinate Court or the High Court or received from Courts outside its jurisdiction, and the serving officer shall serve the summons, notice or process after due enquiry as to the identity of the person on whom, or the house or property where, the same is served. The serving officer shall serve in the presence of at least two independent local residents and he shall, whenever possible, obtain the endorsement by signature or thumb impression of those persons on the original process and, where he is unable to serve the process, he shall, whenever possible, obtain the endorsement by signature or thumb impression of at least two persons of the locality.

**NOTE 1.**—There being no legal obligation upon a plaintiff, decree-holder or appellant to supply an identifier for service of any process, no process-serving peon must return unserved any notice, process or summons merely because no identifier could be had at the place of service. He must make every possible endeavour to find out the person on whom, or the house or property where the process is to be served.

**NOTE 2.**—*Chaukidars* and *dafadars* in West Bengal have been directed by the authorities to give all the information at their disposal and to render any help of which they are capable, to all process-serving peons of civil courts in the matter of execution of processes generally, and particularly of the identification of persons to be served with them. Whenever a *chaukidar* or a *dafadar* is near at hand, he is required to witness the actual service or execution of the process and then to sign the prescribed form of verification of service as a token of his having done so (*vide* Circular Nos. 5059-5063-L.S.-G., dated the 3rd November, 1934). The serving officer shall after writing his report at the place of service obtain from him a verification of service in the form printed upon the back of the process.

**NOTE 3.**—The Nazir should personally scrutinise all cases in which the peon reports that he could not find the person on whom or the house or property where the service was to be made, and he should bring all cases in which the peon appears to be at fault to the notice of the Judge in charge.

(2) If it appears to the Court that sufficient information is not given as to the identity and place of residence of the person on whom, or the house or property where a process is to be served, or if the Court is satisfied from the declaration of the serving officer or upon his examination on oath (if necessary) that the person to be served or the house or property could not be identified after due diligence and enquiry, it may ask the party concerned to supply an identifier.

**65.** If the person addressed is absent from his residence at the time of attempted service and there is no likelihood of his returning there within a reasonable time and there is no agent empowered to accept service on his behalf, nor any other person on whom service can be made, service shall be effected in the manner directed in Or. 5, r. 17. The report of the serving officer should state the grounds of his belief that the person was absent from his residence at the time of attempted service and that there was no likelihood of his returning within a reasonable time and that there was no agent empowered to accept service, nor any other person on whom service could be made; and in any case that the house on the outer door or some other conspicuous part of which a copy of the process was affixed, was the ordinary residence or place of business of the person addressed at the time when it was so affixed.

**66.** If the service is made under Or. 5, r. 15, the report of the serving officer should clearly state, with grounds of his belief that the person was absent from his residence at the time of attempted service and there was no likelihood of his returning within a reasonable time, and that he had no agent empowered to accept the service, and that the person, to whom the process was delivered was an *adult* male member of his family, and was actually residing with him at the time of such service.

**67.** If the service is made under Or. 5, r. 14, the report of the serving officer should clearly state, with grounds of his belief that the summons or notice could not be served on the defendant or respondent in person, and that he had no agent empowered to accept the service, and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the land or other immovable property forming the subject matter of the suit.

**68.** If the return of service is under Or. 5, r. 20, the report of the serving officer should clearly state, with grounds of his belief that the house, upon the door or other conspicuous part of which a copy of the process was affixed, was the house in which the defendant or respondent is known to have last resided, or carried on business or personally worked for gain, or that the service was made in all respects in conformity with the order for substituted service, which should accompany the process. The report of the serving officer should also clearly state, with grounds of his belief how long, and until what time the defendant or respondent resided in the house, and what has become of him.

**NOTE.**—In the case of service under Or. 5, rr. 14, 15 and 17, the report of the serving officer should clearly state, with grounds of his belief that proper and reasonable efforts were made to find out the person to be served. For instance, the serving officer should go to the place or places and at the times at which it was reasonable to expect the person would be found, and mere temporary absence of the person does not justify the serving officer in affixing a copy of the summons on the door of the person's house. The process should again be taken to his house to be served upon him when the inquiries made show that he is likely to be at home and to be found there.

**69.** If the person addressed has no place of residence and he cannot be found or if he is dead, these facts shall be stated in the report together with the names and addresses of at least two persons from whom the facts are ascertained. If the person addressed has ceased to live at the place, his present address, if available, and the source of information should be reported.

**70.** If the service is made under Or. 5, r. 12, on an agent, the report should state with grounds that such agent was empowered to accept service, under Or. 3, rr. 2, 5, 6; Or. 27, r. 2, or sec. 85(1), Civil Procedure Code, or by virtue of appointment for that purpose in writing.

**71.** If the service is made under Or. 29, r. 2, the report should clearly state that the summons or notice was left at the *registered* office of the Company or, if there is no such office, at the place where the Company carries on business, or that it was delivered to any Director, Secretary, or other principal officer.

**72.** (1) In the case of Railway Administrations or Companies in addition to service in the usual way, a copy of the summons should be sent by post under Or. 29, r. 2(b): provided that if the summons is sent by registered post, service in the usual way may be dispensed with.

(2) All General Managers, Deputy General Managers, and Chief Administrative Officers of the Indian Government Railways having been authorised to act *ex-officio* for and on behalf of the Central Government in respect of all judicial proceedings in which the respective Indian Government Railway may be concerned, are recognised agents of the Government within the meaning of rule 2 of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908. Summons, etc., should, therefore, be sent direct to the officers concerned, for service under rule 3, Order III of the Code instead of to the Secretary to the Government of India.

73. If the service is made under Or. 30, r. 3(b), the report of the serving officer should state with grounds of his belief that the person on whom the summons was served had at the time of service the control or management of the partnership business.

74. (1) If the process is addressed to more than one person the report shall describe the manner of service on each person.

(2) Process-serving peons must invariably note the date, hour and exact place of service of each individual process and also the sequence in which processes are served on different persons to be served in the same case and on the same occasion, in their reports and declarations.

(3) Every peon must immediately after completion of any duty connected with a process write clearly with his own hand at the place of service and in the presence of witnesses (if any), his report of service or failure of service.

(4) Every report of service or non-service shall comply strictly with the directions in these rules and in Form No. (P) 1-A, Volume II, and the declaration in proof of service shall be recorded in legible writing in the manner laid down in Form No. 11, Appendix B, Schedule I, Civil Procedure Code, as amended by the High Court.

**N.B.—Instructions for the guidance of process-serving peons and returning officers—**

(a) If the process-serving peon is personally acquainted with the person to be served, the fact should be stated. If he is not so acquainted, it should be stated how he satisfied himself about the identity of the person.

(b) It should be seen that the name of the person who accepts service corresponds exactly with the name given in the process. Where the signature in token of acceptance differs from the name given in the process, the discrepancy should be explained.

(c) Where the process is served on some person other than the persons named therein, who accepts the process on his behalf, it should be stated whether such person is an *adult*, and whether he is living with and is undivided from the person on whose behalf he accepts service.

(d) Where service is accepted by an agent, it should be stated whether such person is duly authorised to accept service.

(e) Where a person refuses to accept the process, the grounds thereof, if any, and the names of the persons witnessing the refusal should be given.

(f) Where a process is affixed owing to the absence of the individual named therein, it should be stated, if possible, both when he left home and when he is likely to return. The attempts made to find out the person to be served should also be stated (see Note under rule 68).

(g) When personal service is not possible on *pardanashin* women, an attempt should be made to serve some responsible male member of the family.

**NOTE—**See also the instructions in G. L. No. 9 of 1905.

**75.** When the summons or notice which has been served is the summons or notice of another Court transmitted to the serving Court for the purpose of service only, then, upon service being effected, this latter Court should retransmit the summons or notice to the Court by which it was issued, together with (1) the Nazir's return, (2) the declaration or deposition of the serving officer and the affidavit or solemn declaration or deposition of the witnesses (if any), relative to the facts of service, (3) the record of such Court's proceedings with regard thereto (Or. 5, r. 23), and (4) in a case where any of these documents is in a language different from that of the district from which the process issues, an English translation of such document.

**D.—Additional Rules relating to the service of Notices, etc., issued by the High Court.**

**76.** On receipt of the proceedings of the High Court, transmitting the notices of appeal, application, etc., the lower court shall cause their service without the payment of any further fee and without any further action by the appellant: provided that the appellant or applicant or some one employed by him may, in any particular case if he so desires, accompany the serving officer for the purpose of facilitating the service of the process.

**77.** The date fixed for the hearing of the case and the time allowed for service and return of the process to the High Court shall be specified in the notice.

**78.** The lower courts shall issue all notices, etc., immediately on receipt thereof and in their returns of service, shall in every instance insert—(a) date of receipt of notice; (b) date of delivery to the serving officers; and (c) date of receiving it back from him.

**79.** It shall be the duty of the lower court to cause the notice to be served in sufficient time before the date fixed, and, if such service be impracticable, to state, when returning it to the High Court, the reasons thereof. The lower court shall satisfy itself that a valid service has been made or that there has been a failure of service and shall certify such opinion with the reasons in case of failure of service. The certificate shall be accompanied by the return of service or of failure to serve the notice and the declaration of the serving officer specifying the fact and mode of service or the reason for non-service.

**80.** Notice for service on respondents or opposite parties residing in any district other than that from which the appeal, application, etc., comes, shall be sent by the Assistant Registrar in charge (Appellate Side), to the proper court in the district in which such notice is to be served. If, however, the opposite party or any of the parties to be served resides in the same district but outside the jurisdiction of the Court from which the appeal, application, etc., comes, the notice shall be sent for service to the Court within whose jurisdiction the party resides, if known; if not known, then to the Court from which the appeal or application comes, directing the latter to forward it to the proper Court within the jurisdiction of which the notice is to be served. The Court which serves any notice shall in every case make its return of service or of the failure of service (as the case may be) direct to the High Court and shall be guided by rules 76, 78 and 79.

### **E.—Service on Persons in Civil and Military Employ.**

**81.** Where service is made in accordance with the provisions of Or. 5, r. 27, Or. 5, r. 28 or Civil Procedure Code, a reasonable time should be allowed for the making of arrangements for the relief of the persons summoned and to enable them to appear themselves or to appoint a representative or make such other arrangement as may be necessary.

**NOTE.**—When issuing processes to employees of the Income-tax Department care should be taken to see that such processes are served through their respective official heads, mentioned in the list below:—

- (1) Commissioner of Income-tax. His personal Assistant (Gazetted Officer).  
Ministerial and menial establishments of Commissioner's office.  
All Assistant Commissioners of Income-tax, Income-tax Officers and Assistant Income-tax Officers (Gazetted Officers).
- (2) Assistant Commissioner of Income-tax of a Range. Executive Officers, ministerial and menial establishments in his own office and executive officers attached to Income-tax offices in his range.
- (3) Income-tax Officer of an Income-tax district. Ministerial and menial establishments in his office.

### **F.—Service of Processes in Kashmir and Manipur.**

**82.** Summonses and other processes issued by any Civil Court in Kashmir and Manipur for service in West Bengal may be sent to the appropriate Civil Court of West Bengal and served as if they were processes issued by such Court.

**83.** Summonses and other processes issued by any Civil Court in West Bengal for service in Kashmir, shall be sent to the appropriate Court in that State [General Letter No. 7. (civil) 1955].

## **2. ARRANGEMENT AND DISTRIBUTION OF WORK IN THE NAZARAT.**

**84.** It shall be the duty of the Nazir—

- (i) to explain to the process-servers the directions in these and other rules in vernacular and to point out the manner in which various kinds of processes are to be served and returns are to be verified;
- (ii) to see that processes are promptly sent out for service and fairly distributed amongst the process-servers, and that a fair average of work is attained by each process-server;
- (iii) to see that as far as possible on an average not less than 20 days in a month are spent by each peon in the mufassil in the service of processes;



- (iv) carefully to scrutinize the diary of the peon and every return submitted by him each time he returns from a journey after service of process, or the reasons given for failure of service and to report to the Judge in charge of the Nazarat all cases of unreasonable delay in service, misconduct, neglect or improper discharge of duty for such disciplinary action as the Judge in charge may think fit and proper.

NOTE 1.—Some of the common faults that require close scrutiny are:—

- (a) Delay in service of processes so as not to allow sufficient time to the person served to appear prepared on the date fixed.
- (b) Delay in service necessitating an adjournment in order that the fixed number of days may intervene between service of summons or notice and hearing.
- (c) Delay in submission of Diary.
- (d) Return of processes unserved on the plea of want of time.
- (e) Return of processes unserved on the plea that no identifier could be had or that the person to be served could not be found.
- (f) Writing of service report after return from journey and not at the scene of service.
- (g) Small percentage of personal service.
- (h) False or collusive report.

NOTE 2.—Disciplinary powers shall be exercised in accordance with rule 17 of the Bengal Civil Courts Clerical and Inferior Services (Recruitment, Discipline and Appeal) Rules, 1941, and the schedule appended thereto (*see* rule 899, *post*).

**85.** All Nazirs will be held responsible to the presiding Judge of each Court at every station for the due and regular service of all processes entrusted to them for service by themselves and their subordinates.

NOTE 1.—Service or execution of processes by Nazir or Naib-Nazir can only be allowed under special circumstances when the court is satisfied by affidavit or otherwise that there has been previous resistance and that execution will not be effected by ordinary peons without danger to the public peace. Deposit of pay of the officer is not required in such cases.

NOTE 2.—Processes (other than those referred to in rule 60 *ante*) received for service from places outside the jurisdiction of the Nazarat concerned should be entered in the process register in red ink and it shall be particularly seen that such processes are promptly served and returned to the issuing courts in sufficient time before the hearing dates.

NOTE 3.—The calculation of the percentage of personal service of processes should be based on the number of processes actually served, as this method is obviously a better criterion of a process-server's success than a calculation based on the number of processes to be served [G. L. No. 12 of 1926].

**86.** Every Nazir shall maintain for the jurisdiction for which he is the proper officer for service of processes:—

- (i) a list of all places within a five-mile radius of his office;
- (ii) a list of all places outside such five-mile radius.

NOTE.—A map showing the villages and thanas in the area under the jurisdiction of the Courts and their distances from each other and from the headquarters should be hung in every Nazarat.

**87.** Processes for service at places within the five-mile radius shall ordinarily be sent out every working day (whenever necessary) and should ordinarily be returned on the next day and not later than the day following.

NOTE.—The District Judge may, in his discretion, suspend the operation of this rule in respect of service of processes in villages which lie within the five-mile radius but outside the town area, during the period from the 1st May till the commencement of the Civil Court vacation.

88. The Nazir shall divide the area outside the five-mile radius into convenient beats or circles where processes should be sent at regular intervals and shall make the best possible arrangements for the prompt service of processes of each beat. The boundaries of the circles and the fixation of the intervals may be varied from time to time as experience dictates. He should also prepare a statement showing on what days process-serving peons are sent out for service in any particular beat and how long the process-serving peon is supposed to be away on that particular beat.

NOTE 1.—The statement should be in the following form:—

*Illustration.*

Beat No. 2.—Processes issue every Tuesday. Process-serving peon returns after 8 days.

NOTE 2.—The distribution of processes on the beat system will of course have to be departed from in cases of urgent processes or in cases where there is an accumulation of processes for a particular beat

89. Returnable dates should not be fixed at random, but sufficient time should be allowed so that the processes for one trip may all be served and returned a reasonable time before the dates fixed in the cases concerned. In fixing dates, the distance to be travelled, the season of the year, the conditions of the locality, the number of processes made over at a time, etc., should be taken into consideration.

NOTE.—When a peon entrusted with the service of several processes finds that there is no reasonable chance of his being able to serve all the processes in the same trip and to return them in sufficient time before the due dates, he should at once send back by post the processes that cannot be served, so that the Nazir may give out such processes to other peons for service if there is sufficient time before the hearing dates. Or, when a peon finds that he cannot return to headquarters before the returnable dates because he has to serve other processes, he should return the processes that he has already served by post before the returnable dates so that the work of the Courts concerned may not suffer.

90. To equalise the work of process-serving peons a certain amount of short beat work as well as a certain amount of long beat work should be given to each peon and there should also be, as far as possible, equality in the number and kind of processes distributed. The Judge in charge of Nazarat should as often as time permits and at least once a month have the processes distributed under his personal supervision.

NOTE.—It shall be particularly seen that all peons to whom processes have been distributed for service leave their headquarters immediately on receipt of processes.

91. (1) Processes received in the offices must be made over to the Nazir, if possible, on the same day on which they are filed and not later than two days after their receipt.

(2) Processes under Or. 16, r. 7-A, for service by the parties must be returned to them or their pleaders after scrutiny and entry of expenses fixed by the Court (under Or. 16, r. 2) for payment to the witness, date, etc., and signature within three days of their filing. All such processes should be entered in the Register to be maintained in Form No. (R) 15.

NOTE.—In order that there may be no delay parties or their pleaders should in their turn also apply for and obtain the processes within the prescribed time. The signature with date of the party or pleader taking delivery of the processes applied for should be taken on the application.

92. Processes are ordinarily to be issued to peons in the order in which they come back from the mufassil. Later processes for a particular beat

are not to be issued to the exclusion of processes for that beat filed earlier. The latter are only excluded, if necessary, by processes marked "Urgent" by the Court.

93. It shall not ordinarily be lawful for the Nazir to keep back processes for any period longer than may be necessary to admit of a sufficient number accumulating for a particular beat. Subject to this, the Nazir shall arrange for the distribution of processes outside the five-mile radius as often as possible in every week or at such other regular intervals as may be necessary, according to the direction of the Judge in charge of Nazarat.

94. As far as possible, all processes other than warrants of arrest for persons residing in the same beat, shall be served by one process-serving peon and not by several, whether issued by the same or by different Courts, provided that their number is not unusually large. No process-serving peon should ordinarily be given processes for service in a locality where his home is situate of his relations reside.

95. The above rule does not apply to processes marked "Urgent." The presiding Judge of any Court may, for any sufficient reason at any hour of the day transmit a process for emergent execution to the Nazir and it shall be his duty on receiving such process to make immediate arrangements accordingly.

NOTE.—For extra fee for urgent processes, see Note 3 to rule 580. The offer to pay extra fee shall not of itself be a sufficient ground for granting an "Urgent" process unless the Court is of opinion that there is any real cause for urgency.

96. (1) The Judge in charge of the Nazarat shall send to every Court at the station a copy of the list of beats or circles showing the names of villages in each beat, on what days peons are sent out for service in each particular beat or circle and how long they are supposed to be away on that beat (*vide*, rule 88), so that processes for service within a particular beat may be sent to the Nazarat in proper time.

(2) The beats shall be fairly distributed between the peons on the establishment and to each peon shall be allotted a number of beats according to the distance, situation and accessibility of the villages comprising each beat. To equalise the work of peons, fresh distribution of beats among them should be made at such intervals as the Judge in charge may direct.

97. Processes made over to the Nazir for service must be returned by him to the issuing Court as soon as possible after they are received back from the peons so as to reach such Court for scrutiny in sufficient time and at least two clear days before the date fixed for hearing of the case or matter.

NOTE.—When processes are returned unserved a considerable time before the date fixed for hearing, it shall be the duty of the Nazir to give out the process for re-service if there is sufficient time before the hearing.

98. The following processes may be executed by special peons:—

- (i) Warrant for arrest of a person.
- (ii) Warrant for attachment of moveables.
- (iii) Any other process ordered by the Court either *suo motu* or otherwise to be so executed.

NOTE.—More than one peon may be deputed for the execution of any process where there is such a direction of the Court to that effect.

**99.** When not employed in serving processes, process-serving peons should be employed in miscellaneous work in the Courts and offices.

**NOTE 1.**—No process-serving peon shall be employed in doing clerical work for the office.

**NOTE 2.**—Process-serving peons when on duty in Court and out on process-serving work, must always wear and display their standard badges.

**NOTE 3.**—Process-serving peons must report themselves to the Nazir and make over to him the diary and all processes with which they were entrusted for service immediately on return to headquarters from a journey. The Nazir must see that this rule is strictly obeyed by each peon and report cases of non-compliance to the Judge in charge.

**NOTE 4.**—(a) During the interval between return to headquarters and departure for service of processes, peons must attend office punctually at the hour prescribed in rule 4 *ante*, when a roll-call shall be taken every day and perform such miscellaneous duties as may be assigned to them.

(b) When signing the Attendance Register everyday, the Judge in charge should from time to time ascertain whether all peons at headquarters have actually come to Court and taken up the duties assigned to them and also inspect the process-registers and diaries in order to see whether the peons who were to have returned from mufassal have come back within the due date.

**100.** (1) So far as budget allotments permit the Nazir at district headquarters shall be deputed once a month for at least three days in the interior to verify either before or after the disposal of cases a certain proportion of the returns of processes issued by the Civil Courts in the district to be fixed by the District Judge. The selection of processes should be made after calling for a report from the Courts of processes which are regarded as suspicious. He shall go to a different locality on each occasion and also invariably verify processes when he goes to the mufassal on business for other purposes.

(2) During the Nazir's absence on such duty, the senior Naib-Nazir or a clerk shall be appointed as cashier on the condition laid down in the Note to rule 749, but no application will be entertained for increase of stag on this account.

## CHAPTER 4

### SERVICE OF PROCESSES IN PLACES OUTSIDE INDIA.

**101.** Certain Courts in the following foreign countries having been notified under clause (b) of rule 26 of Order V, summonses may be sent to such Courts for service:—

**I. *Iraq.***—Indian Courts are free to send processes for service to the Iraqi Ministry of Justice direct. Such documents should be accompanied by an English translation and a covering letter. If for any particular reason, which should be stated in each case, it is considered necessary to send the documents to the Iraqi authorities through the diplomatic channel they should be sent to the High Court for transmission through the proper channel.

**II. *Kenya.***—The Civil Courts (4th June, 1924, late Home Department notification No. F-811-23-Judl.).

**III. *Iran.***—The Civil Courts (3rd May, 1928, late Home Department notification No. F-840-25-Judl.). Documents intended for execution in Iran should not however be sent to such Courts direct. They should be sent to the High Court for transmission through the diplomatic channel.

**IV. *Sweden.***—The Civil Courts (20th June, 1936, notification No. F-12-17-35-Judl.). No charge will be made for the service of processes of Swedish Courts in India.

**V. *Nepal.***—The Nepalese Courts specified in the Appendix to this Part (15th August, 1925, late Home Department notification No. F-576/24-Judl.).

**VI. *Johore (Malay).***—The Civil Courts in Johore, a State in the Unfederated Malay States (11th May, 1940, late Government of Bengal notification No. 1639J.).

**VII. *Federation of Malay.***—The Civil Courts situate in the Federation (3rd June, 1949, Government of West Bengal, Judicial Department, notification No. 2901J.).

**NOTE 1.**—Reciprocal arrangements have been made between India and Japan for the service of legal processes. But these documents should be forwarded through the High Court and the State Government to the Government of India.

**NOTE 2.**—The time limited for appearance or returnable date should be such as to enable processes to be served and the person served to do what is required of him. All Courts, when issuing processes for service in Nepal, should so fix the date for the appearance of complainants and witnesses in consultation with Nepalese Hakims of the Amini Courts that witnesses may not have to return without having their statements recorded on the date fixed.

**102.** (1) When a defendant not being a public officer, resides in Pakistan, the summons may be sent for service on him under the first proviso to rule 25 of Order 5 of the First Schedule to the Code of Civil Procedure, to any court in that country (not being the High Court) having jurisdiction in the place where the defendant resides.

(2) When the defendant is a public officer in Pakistan (not belonging to the Pakistan Military, Naval or Air Forces) the summons may be sent for service on him to the following officers, namely,

(a) where the defendant is a public officer serving in connection with the affairs of the Dominion of Pakistan or is a servant of a Railway in Pakistan, to the Secretary to the Government of Pakistan in the Ministry of the Interior,

(b) where such defendant is serving in connection with the affairs of any other Government in Pakistan or under any local authority in Pakistan, to the Home Secretary to that Government or, as the case may be, to the Home Secretary to the Government within whose territory the local authority has its jurisdiction.

(Ministry of Law Notification No. F.22-I/51-L, dated the 1st September, 1951.)

**103.** Summonses sent by any civil court in Pakistan to any civil court within the jurisdiction of the High Court at Calcutta for service upon a defendant residing within such jurisdiction, shall be served by such civil court and the return of service shall be sent direct to the issuing court in Pakistan.

**104.** Summonses and other processes issued by any civil court in Pakistan for service on any person residing within the jurisdiction of the High Court at Calcutta and sent to any civil court having jurisdiction in the place where the person resides, shall be served by such civil court and the return of service shall be sent direct to the issuing court in Pakistan.

**105.** Summonses and other processes issued by any civil court within the jurisdiction of the High Court at Calcutta, for service on any person in Pakistan, may be sent direct to the civil court in that country having jurisdiction in the place where the person resides.

## CHAPTER 5

### PRODUCTION OF PUBLIC DOCUMENTS AND RECORDS.

**106.** Subject to any provision of the law to the contrary, the originals of public and municipal records should not be called for when duly authenticated and certified copies of the same are admissible in evidence and will serve the purpose for which the records are required. When public documents as defined in section 74 of the Indian Evidence Act, 1872, or documents forming part of public documents or in public custody are called for, the Court calling for them shall state the circumstances which render the production of the documents necessary. When, however, the Collector or other public officer in charge of the documents, has been summoned under Or. 16, rr. 1 and 6, of the Civil Procedure Code, to produce in Court a certain document, it will be his duty to send it to the Court; but such officer may at the same time, in person or by letter addressed to the Court, object to the production of the document under section 123 or section 124 of the Indian Evidence Act (I of 1872), stating the grounds of such objection. On an objection being made, it shall be the duty of the Court to consider and decide according to law if it should compel the production of such document.

**107.** (1) When the Collector or other public officer in charge of documents has been summoned under Or. 16, rr. 1 and 6, to produce in Court a certain document or record, or when the Court has sent a requisition for a record from any Court or office under Or. 13, r. 10, it shall ordinarily be sent by registered post. If, however, owing to excessive weight or any other special reason, the documents or records cannot be sent by registered post, they should be sent by rail.

(2) It is not intended to prohibit the practice of sending records by a special messenger when such a course is considered advisable, *e.g.*, when the document to be sent is a State document of importance, etc., etc.

**108.** When any public document (not being the record of a suit or of a judicial proceeding), or a document in public custody, has been produced in Court in compliance with a summons, and the officer from whose custody it has been produced, desires its prompt return, the Court shall, after the document has been inspected or put in evidence, as the case may be, cause it to be returned with the least practicable delay to such officer, after the preparation of such copy as the Court may require under Or. 13, r. 5(2), unless its detention is considered to be necessary till the delivery of the judgment. The expense of preparing such copy shall be borne by the party adducing the particular document as evidence.

**NOTE.**—As to documents called for from private persons, *see* rule 391.

**109.** When a record is called for, except by superior judicial authority or by a Civil Court acting under Or. 13, r. 10, the Court or officer calling for it shall state the circumstances which render its production necessary. The Judge may decline to forward it, if in his opinion no sufficient grounds are shown. It is improper and inconvenient that records of Courts of Justice should be sent to other public officers or functionaries. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers.

**NOTE 1.**—For form of letter calling for records under Or. 13, r. 10, *see* Form No. (M)10, Volume II.

**NOTE 2.**—The attention of all Civil Courts subordinate to the High Court is invited to items 28 and 29 of the First Schedule to the revised Taxation Rule 74, Chapter XXXVI, of the "Rules of the High Court, Original Side, 1914," regarding the fees chargeable for the production of records in the custody of the High Court, Original Side, Calcutta, reproduced below:—

Rs. a. p.

- |   |           |
|---|-----------|
| 28. For production by an officer of Court in any other Court or Tribunal or before any Commissioner, of the records of any suit or matter, exclusive of travelling expenses | ... 8 0 0 |
| 29. For production by post (exclusive of postage, registration and insurance fees)  | ... 4 8 0 |

In making requisitions for the production of records or documents from the High Court, Original Side, subordinate Civil Courts should send in *court-fee stamps* the fees specified above, in addition to travelling expenses or fees for postage, etc. When an original document is required to be produced by post, a certified copy of the document should be forwarded with the requisition.

**NOTE 3.**—In all cases when an original record is called for from the High Court, Appellate Side, the Court calling for the record should state clearly the reasons which make its production necessary, and forward with the requisition a certified copy of any document forming part of Part I of the High Court record specified in rules 7 and 9, Chapter XV, Rules of the High Court, Appellate Side, 1936, (to be returned with the document called for when the requisition is complied with) except with regard to the following documents, in which instances, certified copies may be dispensed with:—

- (i) applications for substitution, addition or removal of parties and the affidavits filed therewith,
- (ii) applications for the return of documents when they have been rejected or on which special orders have been passed, in civil or criminal cases, and
- (iii) memorandum of appeal and the memorandum of cross-objections in civil cases and the memorandum of appeal (or petition or revision, or letter of reference) in criminal cases, when these have been printed in the paper-book of the case.

In regard to papers forming Part II of the High Court record, no certified copy need be sent unless otherwise instructed.

**NOTE 4.**—When a record or document is requisitioned from the High Court, Appellate Side, on the application of a party under Or. 13, r. 10, a searching-fee of rupee one shall be realised in court-fee stamps in addition to the fee prescribed under Article 1A, Schedule II, Court-fees Act.

**110.** Requisitions made under the provisions of Or. 13, r. 10, by subordinate Courts for the production of records of cases pertaining to, and in the custody of High Courts other than High Court at Calcutta, or Courts subordinate to such other High Courts, should be transmitted through the High Court at Calcutta, and should be accompanied by a copy of the affidavit referred to in the rule above quoted, together with a duly certified translation into English if such affidavit be in the vernacular.

**NOTE 1.**—The procedure laid down in this rule should also be followed in making requisitions for records from the High Court at Rangoon or the Courts subordinate thereto.

**NOTE 2.**—Requisitions for records of the Courts subordinate to the High Court, Calcutta, made by High Courts other than that High Court under the provisions of Order 13, Rule 10, or by the High Court at Rangoon or Courts subordinate to any of those High Courts should not be complied with, unless they are received through the High Court at Calcutta.

**111.** When in the course of proceedings in a Criminal Court, it becomes necessary to refer to the contents of records deposited in another Court, the ordinary procedure is to require copies of the necessary papers to be filed. When, however, the production of an original record becomes necessary, the Judge or the Magistrate shall make a requisition stating therein the reasons



for the production of the original. The Court where the record is deposited shall comply with the requisition even though the receiving Court is of opinion that the reasons given for the production of the original are insufficient. In that case a report shall be submitted for the consideration of the High Court.

**112.** The attention of all Courts is drawn to the following Government Resolution No. 1538, dated the 13th May, 1891, regarding the production of Post Office records, issued by the Director-General of Post Offices:—

A summons from a Court of Civil or Criminal Jurisdiction to produce any of the records of a Post Office, or a certified extract from or copy of any of such records, must be complied with. The receipt of such a summons, and such particulars as are known to the Postmaster regarding the case, should be at once reported to the Postmaster-General, in case he should see fit to raise any objection in Court under sec. 123 or sec. 124 of the Indian Evidence Act (I of 1872), to the production of any of the records. When any journal or other record of a Post Office is produced in Court and admitted in evidence, the officer producing it should ask the Court to direct that only such portions of the record as may be required by the Court shall be disclosed.

## CHAPTER 6

### GUARDIANS *AD LITEM* OF MINOR DEFENDANTS AND RESPONDENTS.

#### A.—In Original Suits.

**113.** (1) Where there are both major and minor defendants and there is no appearance, the guardian, with a view to obtain instruction in the case, should communicate with the natural guardian of the minor and ordinarily with the major defendants by registered post-card in which the subject matter of the suit should be briefly stated.

**NOTE 1.**—If a pleader is appointed in a case where there are both adult and minor defendants having the same interest, the pleader who represents the former should ordinarily be appointed guardian *ad litem* of the latter.

**NOTE 2.**—When the plaintiff is allowed to sue in *forma pauperis* the guardian *ad litem* of minor defendants (where necessary) should be an officer of the Court.

**NOTE 3.**—Where the number of major defendants is numerous, the guardian should seek the Court's instruction as to how many and which of them he should communicate with.

(2) Where the sole defendant is a minor, the aforesaid communication should be addressed to his natural guardian, and in any case where the interests of the minor require, may be addressed to persons other than those who are actually parties to the suit.

(3) If no response is received to the communication mentioned in sub-rules (1) and (2) or if the response is not helpful and the guardian is unable to have a personal interview with the defendants or their agents, he should report the fact to the court in writing, with a statement of the circumstances, and apply for leave to go to the locality for necessary enquiry.

(4) The guardian's report on such local enquiry, if permitted, should contain the following particulars:—

(a) Date and hour of departure for the locality.

(b) Mode of journey, viz., whether by rail or steamer or boat or road.

(c) Date and hour of reaching the locality.

(d) The names of persons who identify the minor.

(e) Age of the minor as stated by the minor's people and as estimated by the guardian.

(f) The names and residences of persons in whose presence the enquiry is held.

(g) Whether the minor has any defence.

(h) If there is defence what is the nature of it and what benefit is expected to accrue to the minor out of the defence.

(i) Whether the minor or his people are able and prepared to meet the costs of the defence, and if not, what is the probable amount of such costs.

(7) If no defence is filed the reasons thereof together with the statements of the persons on whose report the decision is arrived at.

(5) In case the court refuses to grant leave for local enquiry, the guardian will proceed according to the instructions of the court given in each case.

(6) Where in response to the communication mentioned in sub-rule (2) or otherwise, the minor or his natural guardian, or any other persons on his behalf come and see the guardian, his subsequent proceedings and report should conform as far as applicable to sub-rule (4) (g) to (j).

(7) The guardian's report mentioned in sub-rules (4) and (6) may contain such other facts as he may think necessary to bring to the notice of the Court.

(8) Where no response is received to the communication mentioned in sub-rules (1) and (2) and no local enquiry is also ordered by the Court, it shall be the duty of the guardian on a careful scrutiny of the plaint and examination of the record of the suit, if necessary, to find out if there are any *prima facie* defects or legal defences therein as may inure to the benefit of the minor and to bring the same to the notice of the Court in his report. He should in all cases certify in his report that he has taken all possible care in this respect and if he does not find any material for contest shall state that he sees no ground for contest.

NOTE.—The above rules have no application to suits for arrears of rent under the Bengal Tenancy Act or the Cooch Behar Tenancy Act in view of sec. 148(h) of the former Act and section 40(h) of the latter Act unless in any case a person other than the natural guardian of the minor defendant is appointed guardian *ad litem* by the Court on its declining to treat the natural guardian as the duly appointed guardian on failure to appear and object after service of notice.

### B.—In Appeals.

(9) The foregoing rules will apply *mutatis mutandis* to the guardians of minor respondents, subject to the following rules.

(10) If no response is made to the registered post-card mentioned in sub-rule (1), the guardian should, before applying for leave to go to the locality, similarly communicate with the pleader who conducted the case in the lower Court on behalf of the minor or his predecessor-in-interest, and ascertain from him, if possible, the probable cause of the non-appearance of the minor, reporting the result to the court.

(11) If the step taken under the last preceding sub-rule does not elicit any satisfactory results, the guardian should consult the record and submit a report to the court in which he should state whether in his opinion the judgment and decree of the lower Court can be supported and if such opinion is in the affirmative, why he should not argue the case himself before the Court. A written note on the merits of the case should accompany the report and he should in all cases follow the instructions in sub-rule (8) and append the certificate referred to therein.

(12) An amount estimated to cover the actual travelling and halting expenses of the guardian, not exceeding the scale laid down by rule 113A will be required by the Court to be deposited by the party at whose instance the guardian is appointed before an order is passed for a local enquiry

mentioned in sub-rule (3). The amount so deposited or so much of it as may be found due will be paid out to the guardian when he has submitted his report mentioned in sub-rule (4).

(13) The fee prescribed by the High Court and the actual postal charges for communication mentioned in sub-rules (1), (2) and (10) will be deposited into court before appointment of guardian *ad litem* and paid to the guardian on submission of his report.

NOTE.—As to fees for guardians *ad litem*, see rule 613.

**113A.** The rate of travelling allowance to be allowed to the guardian, both in the case of an original suit and of an appeal, shall be his actual fare each way according to the class by which persons of his rank and station in life would ordinarily travel with a daily fee not exceeding Rs. 4 for the days he may be away from the headquarters excepting the days on which the guardian is actually travelling.

NOTE.—Where the journey is by any kind of conveyance by road or water regard should be had to the scale laid down in rule 601(3)(b).

## CHAPTER 8

### PREPARATION FOR TRIAL FRAMING OF ISSUES AND RECORDING OF EVIDENCE.

#### 1. Use of Rules relating to Discovery, Inspection, Admission, etc.

**118.** Presiding Judges should be careful to see that steps in connection with Discovery, Inspection and Admission are taken at proper stages of suits before they come on for hearing. In comparatively big and complicated cases it will be usually advisable, after the documents have been lodged in court, to allow at least one date (and more if necessary) before issues are framed for Admissions, Discovery, Interrogatories or the like, and to fix, if necessary, one or more dates after the issues have been framed for the completion of this preliminary work.

#### 2. Recording of Evidence.

**119.** The use of a typewriter for recording depositions and memoranda of evidence is strongly recommended, provided the typing is done by the presiding Judge himself, a certificate is given that this has been done and he signs or initials each page as soon as he completes it, except in the case referred to in Or. 18, r. 14.

NOTE.—The State Government has agreed to the free supply of typewriter ribbons to the Judicial Officers using their own typewriters for official work in courts (Government of Bengal, Judicial Department, letter No. 6023J., dated the 18th July, 1938).

**120.** (1) Parties shall file in the respective Courts (and not with the Nazir) their list of witnesses who are in attendance to give evidence on their behalf not later than 10-20 a.m., or 5-50 a.m., as the case may be. Lists presented after the prescribed hour shall not be accepted unless the Court is satisfied that there was sufficient reason for failure to present them within time.

(2) The omission of the name of a witness from the list filed shall be no bar to his being examined, if presented for examination at the trial, provided that a regular petition for leave to examine is filed showing sufficient cause for the delay in attendance; but nothing shall be allowed to any witness on account of his expenses for the day's attendance, if he is neither entered in the lists, nor actually examined, unless he can satisfy the Court that his attendance was delayed by unavoidable circumstances.

NOTE 1.—Pleaders signing and filing their list of witnesses should satisfy themselves that the witnesses named therein are actually present in Court. The Court may, in any particular case, if it so desires, get the list verified by one of its own officers.

NOTE 2.—This rule in no way affects the obligation on the part of witnesses to attend punctually at the time for which they are summoned (*vide* rule 52 *ante*).

NOTE 3.—The scale laid down in rule 801 *et seq.* should be the rate at which witnesses' costs are recoverable.

## CHAPTER 9

### JUDGMENT, DECREE AND COSTS.

#### 1. Judgment.

**121.** All judgments, proceedings and depositions should be written only on one side of foolscap paper, one quarter margin of every sheet being left blank. Long judgments must not be recorded on the order-sheet. [See also rule 370 (I).]

**122.** (1) If a vernacular word, not being a technical, revenue or law term, is used in the judgment, its nearest English equivalent shall be added in brackets immediately after the word.

#### No. 56.

age 35, Rule 122(2)—

Read "dates" for "dhates" in line 4 of the rule.

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[No. 56, dated the 27th November, 1963. File No. 4R—25 of 62.]

**123.** Rules 1 and 3 of Or. 20, Civil Procedure Code require that judgment shall be pronounced in open Court and dated and signed in open Court at the time of pronouncing it. Even if it be not possible for pressure of work to read out the entire judgment in Court, at least the findings on each issue and the concluding portion of the judgment shall be read out in open Court and the judgment signed and dated thereafter. Where the entire judgment is not read out in Court, reasonable time shall be given to the lawyers of the parties to read the written judgment after the judgment is signed and dated, by keeping the signed judgment with the Peshkar of the Court during the day on which it is delivered.

**124.** When after conclusion of arguments the presiding Judge cannot conveniently give judgment at once on account of the complexity of a case, or the necessity to consider many rulings he shall record an order fixing a day certain for pronouncing judgment of which due notice shall be given to the parties or their pleaders (Or. 20, r. 1). If the judgment is not ready on the day fixed, it should be adjourned to another fixed date of which due notice should be given to the parties or their pleaders.

NOTE.—Dates for cases adjourned for judgment should be entered in column 2 of the Daily Cause List [Form No. (M)2].

**125.** Every Judge proceeding on leave or transfer must write judgments in all cases and appeals heard up to and including the stage of arguments, unless the inability is due to illness or sudden making over of charge. In such cases, the Judge shall before his departure submit a statement in Form No. (S) 3 with the necessary particulars entered in the appropriate columns and the reasons in the remarks column for not being able to write judgment.

NOTE.—District and Additional Judges should submit the statement to the High Court and Subordinate Judges and Munsifs to the District Judge as in the last preceding rule.

**126.** Judgments may be written during Court hours only after the day's Cause Lists have been completed.

**127.** Judgements in *ex parte* cases shall state specifically and explicitly which of the reliefs in the plaint are granted and against which of the defendants.

**128.** Judgements shall state specifically whether any or what interest (including interest *pendente lite*) is allowed, and also whether interest is to run only on the sum recovered under the decree or both on that sum and costs.

**129.** Every Judge hearing or deciding a civil suit, proceeding or appeal, shall note in the final order or judgment and the decree, the powers or special powers (if any) exercised by him in disposing of such suit, proceeding or appeal.

**130.** (1) Shorthand-typists may be employed by judicial officers of all grades to record judgment, provided that a certificate be attached by the presiding Judge that it has been recorded at his dictation and is correct and each page of the judgment is attested by his signature.

**NOTE.**—Stenographers when not employed on the work of the Courts to which they are attached, may usefully be lent to other officers of the station who require their services.

(2) When a typewriter is used by the presiding Judge himself, he should append a certificate to that effect and attest each page by his signature.

**131.** When a judgment is not written by the Judge himself with his own hand, each page of it shall be attested by his signature and the judgment shall bear a certificate that it was written by the amanuensis at his dictation in his presence and that it is correct.

**132.** Final judicial orders in all classes of cases or proceedings, or orders requiring judicial discretion or discrimination shall be written or typed by the presiding Judge himself.

## 2. Drawing up of Decrees.

**133.** (1) Decrees of District and Subordinate Judges should ordinarily be drawn in English; but the Court may in special cases direct that decrees be drawn up in the language of the Court.

(2) Decrees of Munsifs shall ordinarily be drawn up in the language of the Court; but the Court may, in special cases or if the parties so desire, direct that decrees be drawn up in English.

**134.** In drawing up a decree, the following instructions shall be observed:—

(1) A decree must agree with the judgment and be not only self-contained, so that it may not be necessary to refer to any other document or paper for its understanding and execution, but also precise and definite in its terms.

(2) A decree (*ex parte* or otherwise) shall specify clearly and distinctly the nature and extent of the relief granted, what each party affected by it is ordered to do or forbear from doing and other determination of the suit (Or. 20, r. 6). Every declaration of right made by it must be concise yet accurate; every injunction, simple, definite and plain.

(3) If a decree is affirmed on appeal, the terms thereof shall be recited, so as to make the appellate decree complete in itself. If a decree is varied or modified, the relief granted in lieu of, or in modification of that originally granted shall be fully and accurately set out. If a decree is reversed, the relief granted to the successful party shall similarly be stated.

(4) In a decree, the decretal amount shall be written both in figures and words.

(5) In each decree, whether passed in an original suit or in an appeal, there shall be a note, below the names of the parties, stating, by reference to the serial number borne by each in the decree, which of the defendants or respondents, as the case may be, did not appear to contest the suit or appeal at the final hearing, as well as their total number.

NOTE 1.—Petitions of compromise, maps prepared by the direction of, or accepted by, the Court and similar papers necessary to illustrate or explain the terms of the order passed shall be attached to and form part of the decree and shall be signed by the Judge.

NOTE 2.—Concise but definite particulars of the claim as stated in the pleading and the date of institution of the suit shall appear at the commencement of the decree. It is not necessary to transcribe the whole of the pleadings into the decree.

NOTE 3.—It shall not be necessary to include the memorandum of appeal in the decree of the appellate Court.

NOTE 4.—Where different valuations are put for purposes of jurisdiction and for payment of court-fees, both values should be stated in the decree. The amount claimed as mesne profits should be separately shown. In the case of an appellate decree, the valuation as given in the decree of the first Court should also be embodied.

NOTE 5.—Interest, if any, allowed by the Court should be clearly shown in the decree and also the period for which and the rate at which interest has been allowed. It should also be clearly stated therein whether interest is to run on the decretal amount or on both that amount and costs.

NOTE 6.—As regards the proper form of decree when a compromise goes beyond the subject-matter of the suit, the directions of the Judicial Committee in the case of *Hemanta Kumari v. Midnapore Zemindari Co., Ltd.* (24 C. W. N. 177 P. C.) should be followed. It has been laid down there that "a perfectly proper and effectual method of carrying out the terms of sec. 375, C. P. Code (now Or. 23, r. 3) would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject-matter of the suit, or it could introduce the agreement in a schedule to the decree; but in either case, although the operative part of the decree would be properly confined to the actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement" (*per Lord Buckmaster in ibid*).

NOTE 7.—As to decrees in suits for recovery of rent, *see* rule 285.

135. The registered address for service filed by a party under Or. 6, r. 14-A, or such address after subsequent change, if any, shall be entered in the decree or formal order and not the address as given in the plaint. The following note shall be made in the decree or formal order below the names and addresses of the parties and the note shall be signed by the clerk drawing up the decree or formal order:—

"The addresses given above are the addresses for service filed by the parties with the exception of.....who did not appear or omitted to file their addresses."

136. Decrees shall show properly the names of parties added, substituted or expunged in the course of the suit. In the case of a decree after a remand, it shall show the substitution or addition of parties that may have taken place during the pendency of the case in the appellate Court. (*See* also rule 275.)

137. Every decree in a suit under the Bengal Tenancy Act should set forth the powers of the Judge deciding the suit.

138. In contested title suits, etc., including mortgage suits, and in such other suits as the Court may consider of sufficient importance, decrees shall be prepared by the Sheristadar, if it so directs.

NOTE.—*See* rule 390 and the Notes thereto.



**139.** Decrees shall ordinarily be prepared within seven days of the date of the receipt of the record in the office after delivery of judgment. For the purpose of exercising a check upon the work of the Bench Clerk and the decree-writer, the former shall, before he sends the records to the office, note the date of such despatch in the margin of the order-sheet against the order recording the delivery of judgment.

**NOTE.**—As far as possible decrees should be prepared in the order of the dates of disposal of cases.

**140.** (1) As soon as a decree has been drawn up, and before it is signed, a notice of the fact shall be given in the prescribed Form No. (M)5, which shall be maintained in the form of a register. The parties or their pleaders shall be given facilities to examine the original record, when perusing the draft decree. If the draft decree has been correctly drawn up, it shall be signed by the party or pleader perusing it. If the party or pleader considers that there is a clerical or arithmetical error in the draft decree or that the draft decree is at variance with the judgment, he shall point out the error or variance to the Sheristadar, who shall either make the necessary correction himself or obtain the orders of the Court. The decree shall then be signed by the presiding Judge after he has satisfied himself that it is in accordance with his judgment.

(2) The Judge signing the decree shall make an autograph note stating the date, month and year on which the decree was signed and initial the corrections or alterations.

**NOTE 1.**—When a party or his pleader perusing the draft-decree has no objection to file, he shall sign it.

**NOTE 2.**—The result of the objections (if any) should be recorded in the order-sheet.

**NOTE 3.**—Pleaders are responsible for seeing that decrees are correctly drawn up and that the costs are rightly calculated.

**141.** Decrees or formal orders in the nature of decrees need not be drawn up under the Code in all cases, even though the orders concerned may be adjudications upon rights claimed or defences set up: for instance, final orders under Or. 9, rr. 9 and 13; Or. 21, rr. 2, 58, 91, 92, 99, 100, 101; Or. 41, rr. 19, 21, 23; Or. 47, r. 1, C. P. Code: secs. 26F, 26J, 48E, 84, 88, 91, 93, 98 (8), 99, 148 (k) (iv), 153 (last paragraph), 173 (3), 174A, B. T. Act; secs. 47 (last paragraph), 56(3), 57A of the Cooch Behar Tenancy Act, etc., and interlocutory orders made during the course of a suit or execution proceeding. If, however, any such order is capable of execution or affects execution by reason of adjustment of costs to be paid by one party to the other, it is desirable that a formal order showing the result of the case and containing a concise expression of adjudication be drawn up in the order-sheet. If costs have to be paid by one party to the other, such costs should be shown in the order-sheet as well as the names both of the party by whom they are to be paid and also of the party who is to receive the same, so that the latter if desirous of executing the order may not be compelled to take a copy of the judgment.

**NOTE.**—It is desirable that a formal order should be drawn up after an adjudication under secs. 169 and 148A(8) of the B. T. Act or secs. 54 and 40A(7) of the Cooch Behar Tenancy Act, as the case may be, as to apportionment of sale-proceeds of tenures or holdings sold in execution for arrears of rent.

### 3. Costs.

**142.** (1) Costs in decrees should be very carefully calculated. A party who has been awarded costs in the judgment or order shall be allowed all such costs, charges and expenses, as shall appear to have been necessary or proper for the attainment of justice or for defending his rights. [See rule 117(2).]

(2) Subject to the discretion of the Court, expenses like the following should not ordinarily be deemed as proper and necessary costs:—

- (i) Court-fee stamps on all applications dismissed, or not allowed or not pressed.
- (ii) Court-fee stamps on all unnecessary or defective applications or applications to suit the convenience of a party such as, for adjournment of hearing, for time to file written or other statement or to take some step, for showing cause in case of any default or omission, for withdrawing a claim for amendment of any pleading or petition, etc., etc.
- (iii) Expenses of filing and proving all unnecessarily incurred.
- (iv) Expenses of filing and proving all unnecessary documents or documents which the other party was not previously called upon to admit by notice (Or. 12, r.2) or of exhibiting all unreasonable interrogatories (Or. 11, r. 3).
- (v) Process-fees for serving persons dismissed from the suit, or found by the Court to have been unnecessarily impleaded, or the claim against whom has been dismissed, withdrawn or not prosecuted.
- (vi) Charges incurred in procuring the attendance of unnecessary witnesses.
- (vii) Expenses which appear to the Court to have been incurred or increased unnecessarily or through procrastination, negligence or mistake.

NOTE.—When the claim in a suit valued at above Rs. 50 is decreed in part, reducing the value below Rs. 50, court-fees on all necessary applications should be calculated at the proper amount payable on the reduced value.

**143.** Every Judge should at the time of passing order on each application note whether or not the costs of it should be costs in the cause.

**144.** Where “proportionate costs” are allowed, such costs shall bear the same proportion to the total costs as the successful part of the claim bears to the total claim. When “corresponding costs” or “costs according to success” are decreed, the assessment is to be made as if the suit had originally been brought at an amount representing the value of the successful part of the claim.

## CHAPTER 10

### EXECUTION OF DECREES.

#### 1. General.

**145.** Every application for execution shall be made in Form No. (J)47 in Volume II and set out all the particulars required therein fully and accurately.

**NOTE.**—In pursuance of clause (b) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), the allowances hereinafter mentioned have been declared by the respective authorities to be exempt from attachment by order of a Court, namely:—

#### (A) *By the Central Government.*

The following allowances payable to any public officer in the service of the Central Government, or any servant of a Federal Railway, or of a cantonment authority, or of the port authority of a major port:—

- (1) All kinds of travelling allowances.
- (2) All kinds of conveyance allowances.
- (3) All allowances granted for meeting the cost of—(a) uniforms and (b) rations.
- (4) All allowances granted as compensation for higher cost of living in localities considered by Government to be expensive localities including hill stations.
- (5) All house-rent allowances.
- (6) All allowances granted to provide relief against the increased cost living.

(Notification of the Government of India, Home Department, No. 186/37, dated the 2nd October, 1940, as amended by the Government of India, Ministry of Home Affairs, Notification No. 57/4/49-Ests., dated the 31st May, 1949.)

#### (B) *By the Governor of Bengal.*

The following allowances payable to any public officer in the service of the Government of Bengal:—

- (i) All kinds of travelling allowances.
- (ii) All kinds of conveyance allowances.
- (iii) All allowances granted for meeting the cost of (a) uniforms and (b) rations.
- (iv) All allowances granted as compensation for higher cost of living in localities considered by the Provincial Government to be expensive localities including hill station.
- (v) All house-rent allowances.

**146.** The filing of a copy of the decree along with the execution petition is not compulsory, but if it is not possible to verify the correctness of the particulars in the application for execution from the Court register,

etc., the Court may require the applicant to produce a certified copy [Or. 21, r. 11 (3)] and in the case of decrees for recovery of rent the special reasons for the production of the copy shall be recorded [section 148 (n), B. T. Act; section 40 (k), Cooch Behar Tenancy Act].

**147.** All applications for execution, whether subsequently rejected or not, shall be entered in a register in form (R)5 as soon as they are filed. They shall have affixed to the top left hand corner a slip of paper as in rule 42 on which has been written the name of the first decree-holder seeking execution and of the first person against whom execution is sought and of the filing pleader. This slip will be dealt with as in rule 43.

**148.** Every application for execution shall ordinarily be brought up before the presiding Judge for orders on the next day after it is presented and not later than the second working day following the day of its presentation with all defects and objections to the application, if there are any, noted thereon by the ministerial officer in charge of the file, unless the Court itself extends the time for the purpose, and if a searching-fee of four annas [*vide* rule 514 (I) (b)], has been paid by means of a court-fee stamp affixed to the application, information available in the office which will enable the defects to be remedied shall also be noted on the back of the application.

**149.** If the officer, whose duty is to check applications for execution, has reason to believe that the amount with interest (if any) due upon the decree, or other relief granted thereby, or any cross-decree, is not correctly entered, he will refer to the Court for the correct amount and execution will issue for the amount as stated by the Court subject to any objection by the decree-holder or applicant for execution.

**150.** Every application for attachment of movable property in the possession of the judgment-debtor under Or. 21, rule 10, shall be accompanied by payment into Court of the costs of issuing the process for attachment and if so required, custody fee as well as fee for the coming and going of the process-serving peon (*vide* rule 580, Note 1), for so many days as the Court shall order. The costs of issuing the proclamation of sale under Or. 21, rule 66, shall be paid into Court, as soon after the attachment is made, as the Court may direct.

**NOTE.**—If the decretal amount for which execution is sought does not exceed twenty rupees neither the custody fee nor the fee for the coming and going of the process-serving peon shall be levied.

**151.** Upon the hearing of the execution petition, the Court shall ascertain whether the provisions of the Code and these rules have been complied with, and shall determine whether notice thereof is to be served on any person. If the petition is admitted, the Court shall adjourn the further hearing to a fixed day, and the applicant shall (unless otherwise provided elsewhere) within three days or such other period as may be fixed by the Judge, bring into Court the fees prescribed for issue of processes, the required number of processes duly filled up, and, if the application is for the arrest of the debtor, the subsistence moneys fixed by the Judge under Or. 21, r. 39 (I). At the adjourned hearing, the Court may, if the prescribed fees, processes and subsistence moneys have been put in, order process to issue; or in the case of default, may extend the time for payment and filing of processes, or dismiss the petition. Provided that the Court may, if it thinks fit, on admitting the petition, in any case in which the prescribed fees, etc., and subsistence moneys have been paid, order process to issue forthwith.

**152.** Where an application is made under Or. 21, r. 15, by one or more of several joint decree-holders, unless a written authority signed by the other decree-holders, for the applicant to execute the decree and to receive the money or property recovered, is filed in Court, the Court shall give notice of the order, if any, passed for the execution of the decree to all the decree-holders who have not joined in the application; and may also in its discretion give notice of any application for payment or delivery to the applicant, of any money or property recovered in execution, or may make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

**NOTE.**—The cost of such notice shall be borne by the decree-holders applying for execution or applying for payment, as the case may be.

**153.** (1) Each peon entrusted with a warrant for execution of a decree for money shall be given by the Nazir a duplicate carbon receipt-book in the prescribed Form No. (A) 31 bearing a distinguishing number, containing a number of receipts and their duplicate carbon copies serially numbered and preceded by the Book Number, the total number being certified on the cover by the Judge in charge of accounts.

(2) The Nazir shall keep a register in which he shall enter all duplicate carbon receipt-books received by him, showing (a) the date of receipt, (b) the serial number of each book, (c) the number of receipts it contains, (d) the name of the peon to whom the book is issued, (e) the number of process in the process register, (f) nature and number of case, (g) the date of issue, (h) the peon's signature for it, (i) the date of return and (j) the Nazir's signature. A separate duplicate carbon receipt-book is to be issued to each peon, and no new book shall be issued to him until the one already issued is exhausted and returned.

**NOTE.**—The register prescribed above shall be preserved for three years from the date of the last entry in it.

(3) The Nazir shall keep all blank or exhausted books under lock and key.

(4) The peon receiving any payment shall give a receipt therefor and shall obtain the signature or thumb impression of the payer to the declaration of payment on the counterfoil and shall in his service report invariably mention the number and date of the receipt granted. In the case of illiterate payers, the peon shall make every endeavour to obtain the signature of a literate witness on the back of the counterfoil. He shall also sign legibly the entry in the counterfoil. The receipts should be written legibly and all alterations must be duly attested. The amount realised by the peon must be paid into Court immediately after his return to the station and a carbon counterfoil attached to the process concerned. The Nazir shall, on the return of any process (for the recovery of money) by a peon, whether executed or not, scrutinise the service report with the duplicate carbon receipt-book, and if accurate, initial the counterfoils, and shall not make over any other process to such peon till he has done so. The Nazir shall record the return of the counterfoil (or of the unused form, as the case may be) in the register of receipts. If the receipt has been used, the Nazir shall send the counterfoil with the service-report to the Court concerned, to be filed with the record of the case. Defects or suspicious circumstances should be at once reported to the Court.

(5) After each trip, the peons should deposit their duplicate receipt books with the Nazir who should keep them under lock and key in

the office. They should be reissued to the peons when going out again for service of processes which involve the realisation of money, a note being made of the date in the register of receipts when this is done.

(6) It shall be the duty of the Nazir to explain clearly to the peons the directions contained in this rule and to satisfy himself every time a peon returns the processes and the receipt-book that its several provisions have been strictly complied with.

(7) When a peon dies, retires or is dismissed from service, the duplicate carbon receipt book in Form No. (A) 31, issued in his name, if not already in possession of the Nazir, shall be recalled and each page of the unused receipts cancelled by the Judge in charge of Nazarat under his signature; a note of cancellation shall at the same time be made in the register prescribed by clause (2) above.

**154.** An order under Or. 21, r. 24, appointing an officer to sign processes for execution shall be in writing. Processes for attachment of movables, delivery of possession of immovable property and warrants of arrest should be signed by the presiding Judge himself.

**155.** When no action is taken by the plaintiff or the defendant in respect of any attached property in the custody of the Nazir which has been attached before judgment under Or. 38, r. 7, within six months of the disposal of the suit in which such attachment has taken place, the Court may, after notice to the parties, pass such orders as it may think fit, for the disposal of the property and if it is sold by order of the Court, the sale-proceeds shall be credited to Government.

## 2. Payment and Satisfaction.

**156.** If the person entitled to immediate receipt of money or his duly authorised agent and the payer are both present in Court and payment is applied for, the money may with the leave of the Judge be passed at once direct from the one to the other. In such case the Court shall record an order in the case, for payment to the person so entitled who shall forthwith file an acknowledgment of receipt signed by him: and satisfaction *pro tanto* of the decree or order, if any, in pursuance of which the money is paid, shall be entered.

NOTE 1.—Care must be taken to see that no officer of the Court receives or becomes in any way responsible for the money, and that no receipt for it is given by the Court or any officer of Government.

NOTE 2.—Payment shall not be directed to be made to the pleader of the applicant unless his *valahatnama* contains an express authority for the purpose or a separate instrument distinctly confers on him the authority to receive payment (see rule 864).

**157.** Except when payment is made to the decree-holder under the last preceding rule, all moneys recovered by an officer of the Court, or received by the officer conducting a sale shall be paid into Court in manner prescribed. Such moneys will only be paid out of Court on an application made for that purpose in writing.

**158.** The notice required to be given under Or. 21 r. 1 (2)(a), C.P.C., shall be issued in Form No. (P)19 in the manner contemplated in r. 1(2)

(b) *ibid* after payment of the necessary costs. The issue of the notice should be noted in the appropriate Suit Register.

NOTE 1.—The chalan tendering the money or the forwarding letter when money is remitted by money order (*see* rule 160) shall be accompanied by a sheet containing particulars regarding the number of suit or proceeding, date of decree or order and amount payable under it, due date in the case of instalment, name of the decree-holder or other person entitled to the money and his full postal address.

NOTE 2.—When money payable under a decree is paid into Court, whether in execution of the decree or not, the payment shall be noted in the column for the purpose in the Suits Registers and also on the order-sheet of the suit.

159. When a decree is adjusted in whole or in part under Order 21, rule 2(1) or any payment is made under it, an unstamped certificate in the following form shall be presented to the Court without any formal written application. The certificate must not contain any extraneous matter or anything in the nature of a prayer. If it does or if it accompanies a formal written application, it shall be treated as an application and stamped under the Court-fees Act. The stamp shall not be charged as costs against the judgment-debtor.

IN THE.....COURT OF THE.....AT.....

... .. Plaintiff,

versus

... .. Defendant.

Suit No.....of 19...

*Certificate by decree-holder under Or. 21, r. 2 (1), C. P. Code.*

I.....decree-holder, certify to the Court payment or adjustment in the following terms of the amount of Rs.....in the above suit by.....on the.....

Date.....

Decree-holder.

NOTE 1.—The payment or adjustment under Or. 21, r. 2(1), shall be noted in the appropriate column of the Register of Suits and also on the order-sheet of the suit.

NOTE 2.—If the record of the suit has been deposited in the District Record Room, the connected papers and necessary order shall be sent to the Record-Keeper who shall enter in red ink a note of payment or satisfaction (as the case may be) in the order-sheet of the record of the suit and the entry shall be signed by the Judge in charge of the record room.

NOTE 3.—If the record of the suit is in the Court of appeal the connected

No. 2.

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### Rule 100—

For the rule and the Note thereto, substitute the following:—

100. Where money payable in satisfaction of a decree or order is remitted to the Court by postal money order, it shall contain information in the coupon as to (1) the nature of deposit, (2) the number of suit, appeal or matter or execution case (if any), (3) the name of the person(s) on whose behalf the money is paid in and (4) the name of the person(s) to whom it is to be paid over, or to whose credit it is to be placed. Further particulars may be called for, if the Court, in its discretion and for reasons to be recorded in writing, considers it necessary to do so."

[No. 2 dated the 15th June, 1958, Circular Order No. 3 (Civil) of 1957.]

the cover and the amount shall be received by the Nazir under the order of the presiding Judge of the Court concerned who will have the requisite chalans prepared and the procedure laid down in the rules in Part VI regarding the deposit of

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### 3. Attachment.

#### A.—Attachment of Immovable Property.

**164.** Every application for attachment and sale of immovable property shall in addition to other particulars required by law or any rule, contain a description of the property sufficient to identify it, its area and annual rent and shall also state clearly and specifically the nature and extent of interest of the judgment-debtor, the character of the tenancy and the nature of the land, *e.g.*, whether it is a tenure or under-tenure (permanent or otherwise), or *taluk*, or estate, or an occupancy holding, or non-occupancy holding, or a holding at fixed rates, or under-raiyati holding, or homestead land, etc., etc. Where the lands are situate within an area for which a record-of-rights has been finally published, it shall further contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights and of the area and rental according to such record.

**165.** Every application for an order for sale of immovable property (other than a tenure or holding to be sold under the provisions of sec. 65 of the B. T. Act, 1885), shall, in addition to the verification and the particulars required by Or. 21, r. 66 (3) state everything known or believed by the person verifying the same to exist which relates to the nature, or affects the value, of the property to be sold, and shall further state that he is not possessed of any further information regarding it.

**166.** Every application under sec. 162 of the B. T. Act, 1885, for a combined order of attachment and sale of a tenure or of a holding of a raiyat holding at fixed rates, or of sale only of such tenure or holding already under attachment, shall specify the registered and notified incumbrances subject to which the tenure or holding is to be sold and be verified in the manner prescribed by Or. 6, r. 15.

**167.** (1) When the application is for the attachment of any revenue-paying or revenue-free lands, or of any share in such lands, then, in addition to the particulars required by Or. 21, r. 13, the area of the whole revenue-paying or revenue-free tenure shall be stated in the application in every case in which this information has been recorded in the Collector's register.

(2) When an application is made to a Civil Court for the attachment of an estate, or share of an estate, borne on the revenue-roll of a district, the annual amount of revenue for which the whole estate is liable shall be stated in addition to the particulars required by Or. 21, r. 14 to be specified in the authenticated extract from the register of the Collector's Office.

**168.** All orders made by Civil Courts under Or. 21, r. 54, for the attachment of estates and shares of estates paying revenue to Government shall be immediately notified to the Collector of the district within which such estates or shares of estates are situated.

**169.** Whenever the attachment of an estate or share in an estate is legally and formally withdrawn such withdrawals shall in like manner be notified to the Collector.

NOTE 1.—For form of intimation of withdrawal from attachment, see Form No. (M) 16, Volume II.

NOTE 2.—Rules 168 and 169 do not apply to tenures, holdings or other tenancies held under the Khas Mehal.

*B.—Attachment of Movable property and Livestock.*

**170.** (1) When property is made over to a custodian under Or. 21-A, rr. 3(a) and 5, the schedule of property annexed to the bond shall be drawn up by the attaching officer in triplicate, and dated and signed by—

- (a) the custodian and his sureties;
- (b) the attaching officer;
- (c) if willing, the person whose property is attached and made over;
- (d) two respectable witnesses.

(2) One copy will be made over to the person whose property is attached, one copy will be made over to the custodian and one copy will be retained by the attaching officer to be filed with the record.

**171.** Whenever attached property is kept in the village or place where it is attached under sub-clause (b) of Or. 21-A, r. 3, a schedule of the property shall be drawn up by the attaching officer in duplicate and dated and signed by the attaching officer, two respectable witnesses and the person whose property is attached. A copy of the list shall forthwith be sent to the Court and the other copy shall be made over to the person whose property is attached.

**172.** When any property is taken back from a custodian, he shall be given a receipt for the same.

**173.** The officer deputed to attach movable property shall be furnished with a certificate endorsed on the writ stating the period for which the fees and charges required under Art. 3 of rule 580 *post* have been paid.

**174.** When the property seized under Or. 21, rr. 43 to 45 is in the opinion of the attaching officer of a value not exceeding twenty rupees, he shall inform the judgment-debtor or in his absence any adult male member of his family that it will be sold at once without the issue of any sale proclamation under Or. 21, r. 66. If, however, the decree-holder or the judgment-debtor or any other person acting on behalf of either of them in their absence, objects to such a course, the attaching officer shall refer the matter to not less than three respectable adult persons of the locality of whom a member of the local union board or panchayat if then available, should be one and if the decision of the majority be that the value does not exceed twenty rupees, it shall be final and the attaching officer shall forthwith sell the property by auction after giving to intending purchasers such reasonable notice as is possible under the circumstances of the case. If the value determined exceeds twenty rupees, the attaching officer shall deal with it as prescribed under Or. 21-A, C.P. Code, and supplemented by the rules of this Chapter.

**NOTE.**—When property is sold under the provisions of this rule, no percentage or poundage, as prescribed in Article 7, Rule 580, shall be levied.

**175.** Whenever attached property is kept in the village or place where it is attached and the judgment-debtor gives his consent in writing to the sale of the property without awaiting the term prescribed in Or. 21, r. 68, the attaching officer shall receive the same and forthwith forward it to the Court for orders with an accurate list of the attached property.

**176.** When attached property is made over to a custodian under Or. 21-A, rr. 3 (a) and 5 and such person enters into a bond as provided therein, it shall be brought by the attaching officer and form part of the record. The bond shall be stamped with a court-fee stamp of eight annas in West Bengal under Art. 6, Sch. II of the Court-Fees Act. If the stamp is not available locally, the attaching officer shall realise the required value of the stamp in cash and make it over to the Nazir with the bond as soon as he returns to the station and the Nazir will attach to the bond the necessary court-fee stamp.

**177.** The attaching officer shall be provided with a separate receipt book of the kind prescribed by rule 153 of this Chapter and a receipt shall be given by him for all sums paid to him under these rules. The amount realised must immediately on return to the headquarters be paid into Court and dealt with in the manner laid down in the Account Rules.

**178.** If necessary costs are paid by the decree-holder to the attaching officer and the attached property is removed to the court-house under Or. 21-A, r. 4, C. P. Code, the attaching officer shall file in Court a memorandum of the expenses attending the removal supported by vouchers. Any surplus left in his hands shall be paid into Court. If, however, the decree-holder be available when the attaching officer files the memorandum of expenses attending the removal, any surplus left in his hands may instead be refunded to the decree-holder who shall give a receipt for the same.

**179.** The Nazir will from time to time inspect livestock brought to Court under r. 5 of Or. 21-A, and satisfy himself that the animals are being properly fed and cared for and report to the Court if they are ill or undernourished.

**180.** A register shall be maintained by the Nazir in the prescribed Form No. (R) 20 showing the securities, jewellery and other valuable articles in his custody. A separate register should also be maintained in Form No. (R) 21 for ordinary movables and livestock attached in execution cases whether they are produced in Court or left in the custody of a surety.

#### 4. Sale.

**181.** (1) If the property to be sold is an estate or a share of an estate paying revenue to Government, and the revenue payable on account of such estate or share exceeds the sum of Rs. 500, the proclamation of sale shall be published in the Official Gazette.

(2) This rule shall not interfere with the discretion of the Court under Or. 21, r. 67 (2), in directing, whenever it thinks fit, a similar publication of the intended sale of any other property or properties attached in execution of a decree.

NOTE.—As an additional or precautionary measure, the Court may, where it thinks fit, order the filing of costs and requisite processes so that it may send a concise statement of the sale proclamation to the judgment-debtor by registered post in the same manner as prescribed in sec. 163(3)(c), B. T. Act.

**182.** (1) The District Judge shall select a local newspaper or newspapers and notify the name or names to the public and the subordinate Courts.

(2) Thereafter, if any Court in the exercise of its discretion orders publication of a sale proclamation under Or. 21, r. 67 (2) or rule 74-A of the Statutory Rules under the B. T. Act, in respect of a particular sale, it should be published in one of the newspapers selected by the Court from such approved list.

**183.** (1) Subject to the proviso in Or. 21, r. 43, sale of property in execution of decrees in Courts (not being Courts of Small Causes) shall commence on a certain day in each month to be fixed by the District Judge for Courts at headquarters. For Courts at outlying stations, the sale dates in each month shall be fixed by the District Judge in consultation with the presiding Judges of those Courts or any of them as he may think fit.

(2) It will be in the discretion of the District Judge to divide the Courts at headquarters into as many groups as may be convenient for the speedy completion of sales. The days fixed for the sales of each Court or group of Courts may be consecutive or otherwise according to the number of sales to be held on each day and care must be taken to fix sale dates of each Court or group of Courts at such intervals that all sales advertised for a certain day are completed on that date.

(3) Sale dates of outlying Courts should be fixed on the same principle and where there is more than one Court in the same station, sale dates of all the Courts should not ordinarily be fixed for the same day.

(4) The same days shall not ordinarily be fixed for the sale of both movable and immovable property.

**NOTE.**—Sales must commence punctually at 11-30 a.m. (7-30 a.m. in the case of morning sitting) and every endeavour should be made to complete the sales on the dates fixed in the sale proclamations. Judicial sales being an important function of the Courts it is very desirable that presiding Judges should, from time to time, have the sales conducted in the Court room in their immediate presence.

**184.** All cases in which property, except property of the nature specified in the proviso to Order 21, rule 43 or rule 190 of this Chapter, is to be sold at each place of sale, shall be entered in lists for each place in the prescribed Form No. (M) 4, separate lists being maintainable for cases relating to movable property and for those relating to immovable property. Such lists shall be prepared by the office and after they have been approved and signed by the presiding Judge sent to the Nazir who shall, at the conclusion of the sale, every day, return the lists to the presiding Judge for inspection.

**NOTE.**—Form No. (M) 4.—List of cases in which sales are to be held, shall be destroyed after six months.

**185.** At the stated hour, which shall be 11-30 a.m. (or 7-30 a.m. in the case of morning sitting), upon each fixed date, the sales shall be commenced, and shall be carried on in the order stated in the lists abovementioned, unless otherwise directed by the Court. No sale shall continue after sunset; but the sales shall be held from day to day and throughout the day, except when the Court is closed, and until the lists are finished: provided that this rule shall not interfere with the adjournment of any particular sale according to law (Or. 21, r. 69).

**186.** The Court may, if it so desires and if circumstances justify it, adjourn the sale to a date within the month.

**187.** Except as regards property of the kind mentioned in rule 190 sales in execution of decrees of any Court shall be conducted in that Court by the Nazir or other officer of the Court, or by such other person

as the Court may appoint in this behalf, in the immediate presence of the presiding Judge. Where this is not possible sales may be held in another place within the Court premises to be selected by the presiding Judge: provided that the Court executing the decree, may if it sees fit, for reasons to be specified in writing, direct, in the interest of the parties, that the sale be held at any other time and place within its jurisdiction, and when acting under this last-mentioned proviso, shall, except for good reasons to the contrary, give preference as regards choice of time and place to the wishes of the judgment-debtor.

**NOTE 1.**—An order appointing an officer or other person to conduct a sale under Or. 21, r. 65 shall be in writing.

**NOTE 2.**—When sales at district headquarters are not held in the immediate presence of presiding Judges, in their own Courts, they may be held at any other place in the Court premises determined by the District Judge in consultation with the presiding Judges of other Courts, or any of them, as he thinks fit.

**NOTE 3.**—The person conducting the sale is only a recorder of bids and his function ministerial. All bids must be placed before the presiding Judge who shall note acceptance or rejection. No sale is complete till the Court formally accepts the bid and declares the purchaser under Or. 21, r. 84 (*Surendramohan Sarkar v. Monmathanath Banerji*, I. L. R. 58, Cal. 789).

**188.** When a Court does not accept a bid or orders resale, the reasons therefor shall be recorded.

**189.** (1) In sales in execution of decrees for arrears of rent under the B. T. Act, the Court may, in view of the particular circumstances of the case, fix a reserve price, to be determined as far as practicable with reference to the probable market value of the property, or of the lot or lots into which the property is divided for sale; or make it a condition that the highest bid shall not be lower than the decretal amount and costs and should in either case specify its reasons for doing so.

(2) When leave to bid is necessary, under Or. 21, r. 72, C. P. Code, in cases in which the Court may consider that the applicant should not be allowed to bid for less than a sum to be fixed, it shall be competent to the Court for reasons to be recorded, to give leave to bid at the sale, only on condition that the applicant's bid shall not be less than the amount so fixed by the Court, which amount shall, as far as practicable, be determined with reference to the probable market value of the property or of the lot or lots into which the property is divided for sale.

**190.** All sales of livestock, agricultural produce, articles of local manufacture, and of other things commonly sold at country markets which have not been brought to Court, shall, unless the Court otherwise directs, be held at such market in the neighbourhood of the place where the goods were attached, as may appear likely to be for the greatest advantage of the debtor, regard being had to the prospect of good prices and to the saving of expense in conveyance and carriage.

**191.** If it appears to the Court that immediate sale of movable property in the custody of the Nazir is necessary, *e.g.*, by reason of its being perishable, it may authorise him to sell the same by public auction and may give such directions as to date and place of sale and manner of publishing the same as the circumstances of the particular case demand.

**192.** As soon after the sale of an occupancy holding or a share thereof as possible, the Court shall record an order directing the auction purchaser to file the notices and deposit the fees, required under section 26C(3), B. T. Act, within such time as the Court may allow, which should not be later than the date fixed for confirmation of the sale, and which should not be extended except for good and sufficient reason.

**193.** The proceeds of a sale effected in execution of a decree will only be paid out of Court on an application made for that purpose in writing.

**194.** (1) When a decree-holder applies for leave to purchase under Or. 21, r. 72, no order to set off the purchase money against the amount of the decree shall be made on that application. If a decree-holder-auction-purchaser desires such set off, he shall file a separate application for the purpose at the time of the payment of the poundage fee.

(2) Upon the hearing of such petition, the costs of execution including the poundage fee shall be added to the decree; and in cases in which the amount of the purchase money exceeds the amount of the decree and such costs, the decree-holder-auction-purchaser shall pay into Court the sum of 25 per cent. on the balance of the purchase money after deducting the amount of the decree and of such costs and shall pay the balance at the expiration of fifteen days in accordance with Or. 21, r. 85, C.P. Code.

**195.** (1) When a sale is set aside under Order XXI, rule 89, 90 or 91, C. P. C., or under section 174(1) or 174(3) of the Bengal Tenancy Act, the entire purchase money including the amount deducted for payment of the poundage fee, should ordinarily be refunded to the auction purchaser.

(2) When application to set aside a sale is made under section 174(1) of the Bengal Tenancy Act, or under Order XXI, rule 89, C. P. C., the Court may direct the applicant to deposit the poundage fee and other costs before entertaining the application.

(3) When application to set aside a sale is made under section 174(3), of the Bengal Tenancy Act, or under Order XXI, rule 90, C. P. C., the Court may direct the applicant to deposit the poundage fee and may then include the amount in the costs (if any) recoverable from the executing creditor.

(4) When a sale is set aside under Order XXI, rule 91, C. P. C., the Court may make an order enabling the auction purchaser to recover the poundage fee as part of his costs from the executing creditor.

**196.** Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act (XI of 1878), are sold by public auction in execution of decrees, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken to enforce the requirements of the said Act.

**197.** Civil Courts notifying sales of any estate or shares of an estate to the Collector, after the same have been confirmed, should send to the Collector, punctually, in the first week of each quarter, a statement of the sales of estates, or shares of estates, which have been confirmed during the previous quarter. A blank statement is to be submitted if no sales have been confirmed.

**NOTE.**—The statement should be submitted in Form No. (S) 20.

**198.** Whenever the Civil Courts may have occasion to sell, in execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station, they shall, on confirming the sale, forward a copy of the sale certificate to the Commanding Officer of such cantonment or station, for his information and for record in the Brigade or other proper office.

**199.** When after the confirmation of a sale of immovable property an application is made for a certificate of sale and the requisite stamped paper is filed, a draft shall be made in the prescribed form and the original prepared from the draft.

**NOTE 1.**—If the connected record has been despatched to the District Record Room, under the rules for the periodical transmission of records the Court should call for it for preparation of the sale certificates and no cost is leviable from the party for transmission of the record.

**NOTE 2.**—Applications for sale certificate need not bear any court-fee stamp. If no stamps are filed with the application for sale certificates the application should be rejected. If the application is filed with insufficient stamps, reasonable time shall be allowed to file the deficit and on failure to make up the deficiency within the time allowed, the application shall be rejected. In all cases of rejection, the stamps originally filed with the application shall be returned to the applicant whose dated receipt shall be taken in the remarks column of (R) 31.

**NOTE 3.**—For form of certificate of sale of land, see Form No. (J) 52, Vol. 11.

**NOTE 4.**—Sale certificates prepared shall be notified as soon as they are ready for delivery, in a register in Form No. (M) 5, with necessary modifications. Entries will be made in the register from day to day and signed by the presiding Judge, who will see that the register is laid at some conspicuous part of the Court room for the information of all concerned.

**NOTE 5.**—No applications for copies of sale certificates shall be entertained by Civil Courts. If such copies are required, application may be made for the purpose to the Registry Office.

**200.** (1) All certificates of sale of immovable property, besides showing as accurate a description of the property sold as the nature of each case will permit, shall invariably mention the date on which the sale became absolute.

(2) The following particulars should be inserted in every case:—

- (i) The "addition" (as defined; section 2 of the Indian Registration Act, 1908), of the person who is declared to be the purchaser;
- (ii) particulars sufficient to identify the property, as required by section 22 (2) of the same Act;
- (iii) the name of each registration sub-district in which any part of the property is situate.

(3) Where necessary the following particulars may be given in a schedule to the sale certificate:—

- (i) Whether the property sold is subject to incumbrances; if so, the exact nature of the incumbrances. This must be in accordance with what is stated in the sale proclamation.
- (ii) Area.
- (iii) Boundaries.
- (iv) If the property sold is a whole revenue-paying estate, then *tauzi* number on the rolls of the Collectorate.
- (v) If it is a share of a revenue-paying estate, and if separate account has been opened in respect of the same, then the number of the separate account.
- (vi) The amount of revenue payable for the same.
- (vii) If the property sold is a tenure, then the name of the proprietor, and whether the name of the judgment-debtor is recorded in the proprietor's books.
- (viii) If there has been a record-of-rights, then the cadastral survey number of the property sold.

(4) The description given of the property in the certificate of sale must correspond with that given in the sale proclamation prepared under Or. 21, r. 66 of the Code or under section 163 of the Bengal Tenancy Act.

**201.** In the case of sales under secs. 164 and 165 of the B. T. Act, 1885, the certificate of sale should state that the tenure or holding, and not the right, title and interest of the judgment-debtor therein, has been sold.

**202.** After the sale certificate has been prepared from the draft under rule 199 *ante*, both shall be carefully compared. If they are found to agree, the sale certificate shall be made over to the party applying for it and draft shall be certified to be a true copy and forwarded to the Registry Office without delay. On each copy the amount of stamp duty paid on the original certificate under Article 18 of Schedule 1 of the Indian Stamp Act, 1899, as amended by the Bengal Stamp (Amendment) Act, 1922, must be noted. Under Article 24(a) of the same Schedule, such copies are not themselves required to be stamped. In their preparation, however, forms printed on paper of a uniform size, and having a margin for binding, must be used.

**203.** (i) For the purpose of forwarding copies of sale certificates to the Registry Office, civil courts shall use Bengal Form No. 7.

(ii) Copies of sale certificates shall ordinarily be sent in batches accompanied by a single form; if necessary, use should also be made of the reverse of the top half of the form for noting particulars of the copies despatched.

(iii) The printed form must be used by all civil courts irrespective of whether they are situated at the same station as the Registry Office or not.

(iv) Copies of sale certificates, with the prescribed form duly filled in, shall, in the case of courts located at the same station as the Registry Office, be sent by peon and in other cases by unregistered post.

**NOTE.**—Acknowledgments of the receipt of copies of sale certificates sent to the Registry Office shall be numbered and noted in column 12 of the register (R) 31; they shall then be filed in serial order on a new file and made up ultimately into yearly bundles which shall be preserved for three years.

**204.** Each court shall maintain a register in the prescribed Form No. (R) 31 in which only those applications for sale certificate which have been filed with the requisite stamps or with insufficient stamps shall be entered in serial order.

**NOTE.**—This register shall be examined at least once a week by the presiding Judge, who should particularly see that no undue delay is made in calling for records from the record room or in the preparation of sale certificates, and the fact or such examination having been made together with such instructions or remarks as may appear necessary shall be entered by him.

## 5. Arrest, Imprisonment and Release.

**205.** Whenever a person who has been arrested under a civil warrant appears to be too ill to be removed from his residence or other place where he may be found after his arrest and before he is brought to Court, the officer who has arrested such a person shall forthwith report the matter to the Court and shall remain with the prisoner and retain him in his custody until the order of the Court is obtained under sec. 59(2), C. P. Code.



**206.** All Civil Courts when committing judgment-debtors to prison, shall, for the information of the jail authorities, enter the amount due on the date of the decree and the interest and costs of execution subsequent to the decree, separately in the warrant [Form No. (P) 27].

**207.** Warrants for release should not be despatched by a Court after sunset, or, if so despatched, should be endorsed with instructions for release as early as possible next morning.

**NOTE 1.**—The above provisions apply to witnesses arrested under a warrant and detained in the civil prison.

**NOTE 2.**—Release orders under clauses (ii) and (iii) of the proviso to sec. 58(1) C. P. Code, of a person imprisoned in a civil prison shall be in Form No. (P) 28, Vol. II.

## **6. Resistance to Execution (Anticipated and Actual).**

**208.** (1) A decree-holder praying for police help in execution shall state in his application the full reasons thereof, supported, if required, by an affidavit. The Court may further examine the decree-holder or such other persons as it thinks fit touching the necessity of police help. If upon a consideration of all the facts and circumstances, the presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution will not be effected without serious danger to the public peace, he may, after recording his reason for so doing, make a request to the Superintendent of Police of the district for such police aid as the latter may be able to give in the execution of the writ. It is to be understood that police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grave emergency.

(2) The requisition to the Superintendent of Police should state in brief the need for such aid, the number and rank of men required, the nature of the process and the place where it is to be executed. It will be for the Superintendent of Police to decide how best and when he will be in a position to offer the help sought.

(a) Costs for police help shall be charged in executing decrees in cases where such help is considered necessary because of apprehensions of violence or obstruction from the judgment-debtor himself. The party concerned shall be ordered to deposit such costs for the service as the Superintendent of Police may require under the rules of the department.

(b) Costs for police aid shall not be levied in cases where police help is required because of conditions of a general character, such as the locality being in a disturbed state or a class of people, similarly situated, being likely to make a common cause with the judgment-debtor and resist execution.

(c) In cases where a levy of costs is ordered, such costs shall be added to the costs of execution.

**NOTE 1.**—It shall be the duty of the Court to decide in each case under which category it falls, that is whether police aid should be given under clause (a) above in which case the party has to deposit necessary costs or under clause (b) in which case no costs are to be charged.

**NOTE 2.**—Police aid shall not be requisitioned or taken in effecting the arrest of judgment-debtors unless it is clear that no other means will possibly achieve the required result.

**200.** (1) When a process-serving peon or other officer in execution or service of any process entrusted to him (e.g. writ of attachment, warrant of arrest, etc.) is resisted or obstructed by the judgment-debtor or any other person; or when property duly attached or the person duly arrested is illegally snatched away from his custody by any of them, he shall immediately send a report to the Court concerned from the place of occurrence.

(2) If the Court upon a consideration of the facts disclosed in the process-server's declaration or affidavit (when called for), supplemented, if necessary, by the examination on oath of the process-server or any other person alleged to have been present at the occurrence, is of opinion that a complaint to a criminal court is necessary in the interest of justice, it shall make a complaint accordingly, carefully observing the provisions of sec. 195(1)(a), Cr. P. Code.

(3) If the case is of sufficient importance and the Court is of opinion that a competent lawyer should be engaged for the prosecution for the ends of justice and better conduct of the case, it should write to the District Judge who will then, if considered necessary, move the proper authority for the purpose.

(4) The Court should, after the termination of the criminal case (if any), make a request to the Criminal Court to forward a copy of the judgment with a view to see whether there has been any adverse finding or comment against the conduct of the peon concerned, necessitating the taking of disciplinary action.

## 7. Execution by another Court.

**210.** An application for the transmission of a decree to another Court for execution shall be made by a verified execution petition and shall state, in addition to the particulars set out in cl. (a) to (i) inclusive, of Or. 21, r. 11(2), any facts relied on by the applicant to bring the case within the terms of sec. 39 and Or. 21, rr. 4 and 5, and shall specify the Court to which transmission of the decree is sought.

**211.** Decrees sent to the High Court for execution under sec. 39, and certificates communicating the result of execution proceedings to the High Court under sec. 41 of the Code, shall be accompanied by covering letters.

**212.** When a decree is to be sent for execution to a Court at another station within the same district, it shall be addressed to the Judge in charge of the Nazarat (unless the name of the particular Court is stated in the application for transfer) where there are more Courts than one, and it shall be the duty of that Court to make it over to the Court within the local limits of whose jurisdiction it is to be executed without the necessity of any application in this behalf.

**213.** If after a decree has been sent to another Court for execution, the decree-holder does not, within six months from the date of the transfer, apply for execution thereof, the Court to which the decree has been sent shall certify the fact to the Court which passed the decree and shall return the decree to that Court.

**NOTE.**—When a decree is executed, the certificate as to the result of execution proceedings required by section 41, C. P. Code, shall be sent by the transferee Court with promptitude.

**214.** Every Court shall maintain a register in the prescribed Form No. (B) 22 showing the decrees transferred to another Court for execution and those received from other Courts. The register shall be in two parts, one for decrees transferred to other Courts and the other for decrees received from other Courts.

### **8. Execution by Civil Courts in India of Decrees of Courts outside India and vice versa.**

**215.** (1) The following countries have been declared as "reciprocating territories" under Explanation to section 44A, C. P. Code. The Superior Courts with reference to those territories are as shown against each territory:—

<i>Reciprocating territories.</i>				<i>Superior Courts.</i>
1. Burma	..	..	..	High Court at Rangoon and all District Courts in Burma.
2. Colony of Aden	..	..	..	Supreme Court of the Colony.
3. Colony of Fiji	..	..	..	Supreme Court of the Colony.
4. The United Kingdom of Great Britain and Northern Ireland	..	..	..	High Court in England Court of Session in Scotland High Court in Northern Ireland Court of Chancery in the County Palatine of Lancaster. Court of Chancery of the County Palatine of Durham.

(2) All District Courts in India and all other Courts whose civil jurisdiction is subject to no pecuniary jurisdiction, have been declared by the reciprocating territories to be Superior Courts, provided in the case of the latter class of Courts, that the decree sought to be filed in the Superior Court of the reciprocating territory is sealed with a seal showing that the jurisdiction of the Court is subject to no pecuniary limit.

## CHAPTER 11

### COMMISSIONS.\*

#### 1. General.

**216.** The Presiding officer of every Court should keep a watch on the actual issue of the writ to execute commissions and on the progress in the execution of such commissions.

**217.** (1) Every application for the issue of a commission shall state—

- (a) the grounds thereof and shall, unless the Court is otherwise satisfied, be supported by an affidavit;
- (b) the value of the suit or subject matter;
- (c) the length of time that the execution of the commission is likely to occupy;
- (d) the estimated expenses;
- (e) the details regarding the locality where the commission is to be executed and its distance from the Court, and
- (f) in the case of commission for local investigation or for inquiry into accounts, mesne profits, etc., the specific points on which the inquiry is desired.

(2) If the application is granted, the Court shall, after consulting the parties or their pleaders, estimate the probable duration of the execution of the commission and fix the amount of commissioner's fees, travelling expenses, etc., and direct payment thereof into Court within a specified time, and the commission shall not issue unless the sum fixed by the Court is paid in full within the time limited therefor: provided that the Court may from time to time direct that any further sum be brought into Court by any party.

**218.** (1) Before issuing a commission the Court shall—

- (a) call on the party at whose instance the commission is granted to supply copies of the pleadings or abstracts thereof (if by reason of the length of the pleadings the Court permits the filing of abstracts), and issues for the use of the commissioner;
- (b) satisfy itself that all interrogatories, cross-interrogatories, maps, papers, etc., necessary for the execution of the commission and the costs ordered to be paid, have been put in.

(2) Strict compliance with the orders regarding deposit of commissioner's fees in respect of every commission should be insisted on and except on very good grounds, the time once fixed for the purpose should not be extended.

**219.** (1) Every order for the issue of a commission shall appoint a date allowing sufficient time for its execution and return.

(2) If on receipt of the commission or after starting work in execution thereof, the commissioner is of opinion that the time allowed is insufficient,

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\*For expenses of commissions, see rule 603 *et seq.*

he should at once refer the matter to the Court for orders stating the extra time required, and must not postpone his application until the time allotted is about to expire. If the application appears to be reasonable, additional time may be allowed, the parties being duly informed of the revised date.

**NOTE.**—Commissioners should not be paid by, nor should they accept directly from the parties any money on account of fee, travelling expenses, etc. All such amounts must be paid into Court and commissioners should draw their fee, travelling allowance and other expenses from the Court in the usual way.

**220.** Commissions should not be executed piecemeal or at intervals. When the work of a commission has once begun, it shall be continued from day to day and throughout the day until it is completed, unless an adjournment is necessary in exceptional circumstances in which case the commissioner should at once inform the Court and seek its directions.

**NOTE 1.**—A day's work consists of six hours.

**NOTE 2.**—This rule does not preclude division of work in big commissions, among several commissioners.

**221.** The diary [Form No. (M) 6] of the commissioners and the bills submitted by them should be scrutinised and passed for the amounts allowed as early as possible after submission of report. If the work is a long one and it cannot be determined whether it has been done satisfactorily and what remuneration would be proper without hearing evidence at the trial and the objections to the report of the commissioner, if any, the Court may allow a reasonable sum to be drawn from the money in deposit before the conclusion of the trial. In the case of a commission involving prolonged work, the Court may permit the commissioner to withdraw from time to time such sum as may appear necessary and reasonable on account of fee, travelling expenses, etc. All such payments before the completion of the work and the final settlement of the bill shall be subject to the condition that if the commission is found not to have been executed satisfactorily, or if the work turns out to be less than was expected, the commissioner shall refund such sum as may be directed by the Court.

**222.** Whenever transmission by post is necessary for issue of a commission, whether to a Court or to a pleader, the papers are to be sent and returned by registered post and the cost of so doing should be realised from the parties.

**223.** All instances of dilatoriness and negligent or unsatisfactory work should be noted in the appropriate column of the Register of Commissions [Form No. (R) 34] and commissions should not be given to persons whose work is found to fall below a reasonable standard of efficiency or punctuality. In suitable cases a report should be made to the District Judge for removal of name from the list of commissioners or such action as may be considered proper.

**224.** In order that District Judges may satisfy themselves that commissions are being fairly distributed and promptly and efficiently executed, a half-yearly statement should be submitted to the District Judge by each subordinate Court showing the particulars required to be entered in the Register of Commissions.

**NOTE.**—Loose forms of the Register of Commissions [No. (R) 34] should be used  
submitting the statement.

**225.** Selection of commissioners must in all cases be made by the presiding Judge himself and the order of appointment written by his own hand. Every care should be taken to ensure a fair and equitable distribution of commissions. (See, rule 241.)

## 2. Commissions to Examine Witnesses.

**226.** Whenever application is made for the issue of a commission to examine witnesses, the Court, in exercising its discretion upon the particular circumstances of the case, should require to be satisfied on the following points:—

- (a) That the application is made *bona fide*, e.g., that it is not part of an endeavour to put a particular witness out of the way.
- (b) That it has been made in reasonable time so as to avoid unnecessary delay.
- (c) That the issue upon which the evidence is required is one which the Court ought to try.
- (d) That the witnesses to be examined can give evidence material to the issue.
- (e) That there is good reason why they cannot be examined in Court in the usual way.

NOTE.—For fees of Commissioners, see rule 603.

**226A.** Every order directing the issue of a commission for the examination of a witness under Or. 26, r. 4 (see also sec. 76, C. P. Code) shall state whether the commission is to be addressed to a Court or to a pleader.

**227.** Commissions under Or. 26, r. 4 (1) (c) of the C. P. Code for the examination of the Government Examiner of Questioned Documents or his Assistant should be issued to the Senior Subordinate Judge, Simla and normally should be so worded that either the Government Examiner or his Assistant can give evidence. In cases in which the Courts concerned consider it impossible to dispense with the appearance of such officers before them, applications should be sent direct to the Government Examiner of Questioned Documents, Intelligence Bureau, Ministry of Home Affairs, "Dormers", Simla 1.

NOTE.—Such applications will ordinarily be accepted but may be refused at the discretion of the Government Examiner of Questioned Documents if they cannot be entertained without detriment to his other work.

**227A.** Whenever the post is to be used for the issue of a commission, whether to a Court or to a pleader, the papers are to be sent and returned by registered post. The cost of doing this will be part of the regular cost of the commission. When the papers are transmitted to the Court or pleader otherwise than by post, such precautions as are possible shall be taken against the loss of any part of the papers. The packet may also be insured for any value which the party places on it if the party deposits the costs accordingly. Such costs will not form part of the costs of the commission.

**227B.** Commissions addressed to a Court for the examination of witnesses resident beyond the jurisdiction of the Court issuing the commission, and not within the local jurisdiction of the High Court on its Original Side, ought ordinarily to be directed to the Munsif's Court within whose jurisdiction the witness resides.

**228.** If the fees received with a commission from a Court, whether within or outside the jurisdiction of the High Court, are insufficient to cover the cost of returning the papers by registered post and also, where the commission is issued by post to a pleader or other commissioner, the cost of transmission by registered post to and from the commissioner, the issuing Court should be asked to remit the additional fee required before the commission is executed.

**229.** If a pleader of their own sex is preferred for examining *parda-nashin* women witnesses residing within the jurisdiction of Calcutta or 24-Parganas, the fact may be mentioned at the time of sending commissions to the Calcutta Small Cause Court and the Courts at Alipore so that the commission may be assigned to such a pleader, if available [G. L. No. 13 of 1934].

**230.** On receipt of a commission issued under Or. 26, r. 4, for the examination of a witness, the commissioner should determine where he will proceed to execute it, i.e., whether (1) at the residence of the witness, or (2) at some convenient locality in the neighbourhood of the Court, or (3) if the commissioner be a judicial officer, whether the witness shall attend in the Court or in the premises of the Court of such officer, proper arrangements being made, if necessary, for due privacy. As a rule a person to be examined by commission should attend the commissioner at the particular time and place specified in the notice issued; but discretion should be exercised in the examination of those whose attendance is ordinarily excused, such as women, persons unable to be removed from their houses owing to old age, sickness, or other bodily infirmity, or persons of rank exempted by an order under sec. 133, C. P. Code, from personal attendance in Court. In such cases the commissioner should endeavour to discharge his duty with due regard to the special circumstances and condition of the particular witness.

**231.** (1) While evidence should not as a rule be excluded by the commissioner on debatable grounds, he is nevertheless responsible for preventing abuse of the right of cross-examination and for keeping it within reasonable limits. Whenever it appears to him that cross-examination is being needlessly prolonged or other abuse of process is taking place, he should stop proceedings and bring the matter to the notice of the Court for directions.

(2) When a party fails to appear on the day and at the hour fixed for examination or applies for time, the commissioner should proceed *ex parte* if he is of opinion that adjournment is sought on frivolous or unreasonable grounds.

**232.** A commissioner shall return the papers to the Court through which he received them, whether this be the issuing Court or not. Proper precautions shall be taken against the loss of any part of them, and if it is necessary to send them by post, they shall be registered.

### **3. Commissions and Letters of Request issued to Foreign Countries.**

**233.** The Court should in all cases require a deposit for the expenses of executing a commission or a letter of request for the examination of witnesses in a foreign country and see that the sum is paid into court before issuing the commission or letter of request. The amount and the fact that it has been deposited should be stated in the letter forwarding the documents for transmission. Provided that should the sum deposited

Proves  
deposit

Page 61, Rule 235(1)—

... that ~~any~~ further sum or sums be  
No. 58.

Insert the following after the rule:—

"Note.—For procedure regarding payment of fees by the courts in foreign countries, reference may be made to the courts in foreign countries, reference may be made to the Letter No. 4 (Civil) of 1961."

61, Rule

Insert the

Note.—

1908

exec

Government of

Bengal and the Deputy High Commissioner

Dacca."

[No. 58, dated the 27th November, 1963.

1961.]

General Letter No. 4 (C

57, dated the 27th November, 1963. General Letter No. 5 (Civil) of 1961.]

... arrangement will be made for the execution of the documents only if the party interested deposits the sum of £ 25 sterling in favour of the High Commissioner for India in the United Kingdom, the draft in question being sent along with the documents, and undertakes to pay any excess over £ 25 if the expenses exceed that sum.

(2) The commission or letter of request and interrogatories both for the purposes of examination and cross-examination should be neatly prepared on good paper in a form presentable to the High Court of England. All these documents should be sent *in duplicate* in a sealed cover.

#### 4. Commission for local investigation.

**236.** (1) When a subordinate Civil Court, either of its own motion or on the application of a party, directs a local inquiry, the order for such inquiry shall be drawn up by the presiding Judge himself and shall contain the following matters:—

- (a) Whether the inquiry is directed by the Court *proprio motu* or upon application, and if upon application, from which party.
- (b) What the points are which require elucidation or ascertainment in that particular way.
- (c) Why such matter could not be proved or ascertained in the ordinary way by producing documents at the proper time and witnesses at the trial.
- (d) The instructions given to the commissioner.

(2) In all orders of investigation by a commissioner under Or. 26, r. 9, these rules shall be cited as well as the section or Order or Rule of the Code.

**237.** (1) If the enquiry is ordered, a proceeding shall be drawn up under the personal supervision of the presiding Judge in Form No. (J) 38 or (J) 37 according as the enquiry involves or does not involve survey work and relayment of maps or other documents. The proceeding should clearly and specifically define the points on which the report of the commissioner is required, and upon which it is to be evidence; and those points ought usually to be excluded which can conveniently, and ought under the law to, be substantiated by the parties by evidence at the trial.

(2) The commissioner's duties should be strictly limited by the order to the points thus defined and he must confine his inquiry to those points and report on them only, without undertaking any other work at the request of the parties.



**NOTE 1.**—When boundaries have to be refixed or maps have to be relaid, the description and names of the maps or *chittas* to be used and the particular work to be done in connection therewith should be specifically stated. Clear directions should be given as to the starting point of the inquiry. Commissioners should be instructed that the work of survey shall, where practicable, be connected with such permanent marks as may exist in the vicinity and that the map prepared shall show the permanent marks, the boundary of the disputed land, the boundaries of adjacent lands so far as may be necessary and the position of the settlement, revenue, *thak* and other survey lines if such position can be determined with sufficient accuracy, and such lines are relevant to the dispute.

**NOTE 2.**—When fixing the date of return of the commission, due regard should be paid to the nature of the case, the quantity of work to be done and in the case of survey work, to the season of the year and the condition of the property to be surveyed. If on receipt of his commission, a commissioner is of opinion that the time allowed is insufficient, he should at once refer the matter to the Court for orders stating the extra time required and must not postpone his application until the time allotted is about to expire. If the representation appears to be reasonable, additional time may be allowed, the parties being duly informed of the revised date.

**NOTE 3.**—When a commission is cancelled or withdrawn by the Court for dilatoriness or unsatisfactory work, or for any improper conduct on the part of a commissioner, or when adverse remarks regarding the commissioner's work or conduct are made in the Court's order or judgment, the fact should be noted in the appropriate column of the Register of Commissions.

**238.** Except as otherwise provided, no person other than pleaders who have obtained a certificate of proficiency in surveying after passing the Pleaders' Survey Examination held by the Pleaders' Survey Examination Board at Sibpur shall be enrolled in the list of persons qualified to execute survey commissions and all commissions for local investigation which require a knowledge of surveying shall be issued only to such pleaders.

**NOTE 1.**—When a commission has to be executed requiring the survey of a very large area in which the use of a theodolite is essential, it should be issued to a Technical Adviser trained to theodolite work or to an Assistant Settlement Officer or to a professional surveyor with similar qualifications provided the services of a Class I pleader commissioner are not available. If the services of a Technical Adviser or an Assistant Settlement Officer are required an application should be made to the Director of Land Records and Surveys, West Bengal.

**NOTE 2.**—Hints and instructions for the guidance of commissioners in carrying out a theodolite traverse (with separate detail survey by plain table and chain, etc.) and in making field measurements with chain and compass will be found in a book issued for the purpose.

**NOTE 3.**—In the case in which the tracing of boundaries in undulating or hilly country is necessary, or in the case of mines, or in irrigation cases, in which the use of level is necessary or in cases involving the measurement and valuation of house property, or in other intricate cases, the commission should be issued to a thoroughly qualified and experienced professional person holding the required degree in surveying or engineering, or other equally qualified person with special expert knowledge of the local conditions and duties he will be required to perform in connection with the execution of the commission.

**NOTE 4.**—List showing the magnetic declination for the districts in West Bengal in every year may be had from the High Court upon application through the proper Court.

**239.** (1) For each district there shall be a fixed number of persons determined by the High Court for the execution of all survey commissions arising within it. The number shall be fixed with due regard to the average number of such commissions issued during the last three years and stated separately for (a) the district headquarters and (b) the outlying stations. The number fixed for each station shall be such that all commissions may be executed without unreasonable delay and at the same time the number of commissions allotted to each commissioner should be sufficient to earn for him a dependable income every year from this

source. The number thus fixed shall not be allowed to exceed without the sanction of the High Court.

**NOTE 1.**—Those pleaders who are prepared to give preference to the execution of commissions over their ordinary professional work should only be enrolled in the list of commissioners and busy practitioners who have neither inclination nor sufficient time to devote to such work should ordinarily be excluded.

**NOTE 2.**—The Courts at each station should ordinarily issue commissions to the pleader commissioners listed for that station. If the hands of such commissioners are full and the number of commissions at one time is such that the execution by the commissioners for that station will not be effected without unreasonable delay or if there is no pleader commissioner listed for that station, the Court concerned will issue commissions to a pleader commissioner of the nearest station in the district, but travelling expenses in such cases will be allowed from the station from which the commission has originated. When a Court is obliged in aforesaid circumstances to appoint a commissioner of the nearest station, it may, in its discretion request the Senior Munsif of the station, or the District Judge, if it is a sadar station, to suggest the name of a pleader commissioner for appointment.

(2) The list shall contain the names of survey passed pleaders arranged in the order of their seniority according to the year of their passing the survey examination and of the station where each such pleader is practising, provided that if a survey passed pleader transfers his practice from one station to another he will occupy the last place in the list for the latter station and provided also that if a survey passed pleader suspends practice and thereafter resumes it, his name will be restored at the bottom of the list.

**NOTE.**—If at any station there is at present an unpassed pleader commissioner, there should be a temporary list for the station showing his name which will be removed as soon as a survey passed pleader is enlisted for that station; the temporary list will then be abolished.

(3) Pleadors who pass the examination and practical test in all instruments including theodolite in particular and hold class I certificates will be separately enlisted as class I pleader commissioners and the rest as class II and the former should always be chosen for relays or surveys requiring theodolite work.

(4) If the number of survey passed pleaders in the list exceeds the total number fixed for a station on account of addition of newly passed survey pleaders or transfer of survey passed pleaders from another station, the names of such pleaders shall be placed in a supplementary list for the station. Pleadors in the supplementary list should be given survey commissions whenever the services of persons in the original list are not available on account of their being engaged in commission work or for other reason, or when they have already been given a good amount of work.

**NOTE.**—Pleader commissioners included in the list who on account of infirmity or sickness are unfit for outdoor work and are unable to perform their duties promptly and efficiently, and persons above the age of fifty-five who are similarly incapable should not be entrusted with commissions. Pleadors whose professional engagements do not leave sufficient time for undertaking such work and who in consequence make delay in executing commissions should also be excluded. The names of such infirm or busy practitioners, should be reported to the High Court for being removed from the list.

**240.** (1) Applications for enlistment as pleader commissioners shall be forwarded for orders to the High Court by District Judges with their suggestions.

(2) District Judges will submit to the High Court at the end of each quarter a report as to whether any changes are necessary in the list of pleader commissioners maintained for their districts. An up-to-date list of pleader commissioners should be submitted along with the fourth quarterly report.

(3) The High Court will from time to time issue a revised printed list of pleader commissioners for all the districts. No change should be made in the list except as directed by the High Court.

**241.** (1) Great care should be taken to see that commissions of all kinds are allotted to persons in the list in strictly fair order so as to ensure equitable distribution of work and remuneration. (See rule 225.)

(2) Every commission issued by the Courts at district headquarters or in the outlying stations should be entered forthwith in a common register to be maintained at each station showing (a) the name of the Court and No. of the case; (b) date of issue of commission; (c) nature of work to be done; (d) name of commissioner; (e) date fixed for return with extensions, if any, as they are granted; (f) probable number of days the work may occupy; (g) date of actual return, and (h) the remuneration fixed.

(3) Every Court at a station should before selecting a commissioner call for and consult this common register in order to ensure a fair distribution of work and remuneration among all the commissioners. A commissioner should not have in his hand at one time more than such a number of commissions as can be executed with reasonable promptitude.

NOTE 1.—In order to enable a proper check to be made of the equitable distribution of work and remuneration as also of the number of commissions in the hands of a commissioner at one time, a sufficient number of pages of the register should be set apart for each commissioner in the list with a name index giving reference to the pages of the book.

NOTE 2.—The District Judge should make a careful scrutiny of the half-yearly returns and also satisfy himself at the time of periodical inspection by an examination of the Register of Commissions and records that these rules are being strictly followed and commissions are being distributed in strictly fair order.

**242.** As soon as possible after the completion of his work the commissioner shall submit his report to the Court issuing the commission together with his diary [Form No. (M) 6] maintained from day to day in English in the prescribed form.

NOTE.—Field books should be inked in by the commissioner before the report is submitted.

**243.** The Court shall consider the objections, if any, of the several parties to the report of the commissioner and may accept the report or any portion of it or pass such orders as it thinks fit under Or. 26, r. 10(3).

**244.** Commissions for partition or for ascertaining mesne profits or damages, or commissions in execution proceedings may be given to pleaders who have not passed the survey examination unless a thorough knowledge of surveying is essential for the execution of such commissions.

#### COMMISSIONS FOR TAKING ACCOUNTS.

**245.** (1) If in any suit or matter it is necessary to take an account, the order or *interim* decree of the Court shall contain the following directions as far as in the opinion of the Court issuing the commission they are adapted to the requirements of the case:—

(a) The nature of the account to be taken.

(b) The date from which and the date to which the account is to be taken.

- (c) The name of the party by whom a statement of account is to be filed.
- (d) The periods within which the statement of account, objection and surcharge are to be filed.
- (e) The date on which the commissioner is to submit his report.
- (f) Any other matter on which the court may think it necessary to give, or the commissioner may desire to obtain, its instructions.

(2) The statement of account shall be in the form of a debtor and creditor account and shall be verified by the accounting party or his agent. The items on each side of the account shall be numbered consecutively and a balance shall be shown.

(3) The statement of an objection to an account, or to the report of a commissioner, shall specify the items to which objection is taken by reference to their number in the account or report, or the date of the item and page of a particular book of account.

(4) The statement of surcharge shall specify the amount with receipt of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him.

(5) The statement of objection or surcharge shall also state (a) the grounds of each objection and surcharge and (b) the balance, if any, admitted or claimed to be due; and it shall be verified by the affidavit of the party concerned or his agent.

(6) If any party fails to file his statement of account or objection and surcharge, within the period allowed, the commissioner shall report the fact to the Court, and on the application of the defaulting party, the Court may extend the period or direct the commissioner to proceed *ex parte* as regards such party or direct any other party to file a statement of account, or the Court may proceed to decide the suit forthwith on the evidence before it.

(7) If the commissioner is unable to submit his report within the time fixed by the Court he shall apply to the Court for an extension of the time giving reasons thereof and the Court may extend the time or cancel the commission and appoint a new commissioner.

(8) When the case before him is ready for hearing, the commissioner shall, after reading the statements filed before him and after examining the parties, if necessary, ascertain the points on which the parties are at issue and require them to produce their documentary or oral evidence on such points.

(9) After the evidence has been duly taken and the parties have been heard, the commissioner shall submit his report together with a statement in the form of a diary of the proceedings heard before him each day. If he is empowered under Or. 26, r. 12 (1) to state his opinion on the matter referred to him he shall append to his report schedules setting out (a) the contested items allowed or disallowed, (b) the reasons for allowing or disallowing them, (c) the amount found due, (d) the name of the party to whom it is due and (e) the name of the party by whom it is due.

**246.** When the report is received the Court shall fix a date within which the parties are to file their objections, and after considering the objections, if any, the Court may act upon the report or a portion of it or pass such orders as it thinks fit under Or. 26, r. 12(2).

**247.** When a person is directed to file his accounts periodically the Court shall fix the dates in each year before which his statement of account and balance are to be filed and on which the same will be considered.

**248.** In order to ensure greater efficiency in the quality of the work, commissions for examination and adjustment of accounts under Or. 26, r. 11 should be restricted to a small number of persons who are considered by the Courts to be specially qualified for such work. The number of persons to whom account commissions are to be limited should be determined with due regard to the average number of such commissions issued by the Courts at a station during the last three years.

**NOTE 1.**—For each station a list shall be prepared of account commissioners by the seniormost judicial officer in consultation with the Judges of other Courts and sent to the District Judge for his approval. It may not be necessary to have in the list more than 2 to 4 persons in outlying stations and a few more at *Sadar*. The list should be revised from time to time and the number adjusted according as the amount of work increases or falls.

**NOTE 2.**—Every account commission issued by the Courts at a station should be entered forthwith in a common register showing (a) the name of the Court and the number of the case, (b) date of issue of the commission, (c) name of the commissioner, (d) date fixed for return with extensions, if any, as they are granted, (e) probable number of days the work may occupy, (f) the date of actual return, and (g) the remuneration fixed. This register should be consulted by the Courts before issuing commissions in order to secure fair distribution.

**NOTE 3.**—*See*, rule 241(1) and (3) and Note 1 thereto.

**NOTE 4.**—Where the accounts to be examined are intricate or are kept in a way common to mercantile establishments or companies, or where auditing of accounts is necessary, the Court may appoint a qualified auditor or person having special qualification.

## CHAPTER 12

### SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS

**249.** All suits in Civil Courts, for the prosecution or defence of which persons in the service of Government, officers in the army, or soldiers have obtained leave of absence, shall be disposed of by such Courts as soon as they are ripe for hearing, irrespective of the order in which they may stand in the register and as speedily as may be consistent with the due administration of justice.

**250.** In every case in which the Government Pleader appears for the Government as a party, or for the Government as undertaking, under the provisions of Or. 27, r. 8, C. P. Code, the defence of a suit against a public officer in the service of the Government, he shall, in lieu of a *vakalatnama*, file a memorandum on unstamped paper signed by him, and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the following form:—

#### *Title and particulars of the suit*

I, A. B., Government Pleader, appear on behalf of the Government (the Central Government, or the State of West Bengal, as the case may be), Respondent (or, etc.) in the suit: or, on behalf of the Government which, under Or. 27, r. 8, has undertaken the defence of the suit, Respondent (or, etc.) in the suit.

**NOTE 1.**—In every case in which the Government Pleader shall appear on behalf of any officer in the service of the Government, other than cases in which the Government has, under Or. 27, r. 8, undertaken the defence of the suit, such pleader shall file a *vakalatnama* in the same manner as any other pleader.

**NOTE 2.**—Government Pleaders of the State of West Bengal have been appointed by the Central Government under rule 8B(a) of Or. 27 of the C. P. Code, to be Government Pleaders in the cases referred to therein.

**251.** No civil judicial authority shall pay out money to Government Pleaders or persons acting on behalf of Government in any suit, unless they produce an authority in writing from the Collector or other officer representing Government, directing them to apply to the Court for such money.

## **CHAPTER 13**

### **INCIDENTAL PROCEEDINGS.**

#### **Appointment of Receivers.**

**252.** When any Civil Court attaches landed property paying revenue to Government and appoints a manager under Or. 40, r. 1 of the C. P. Code, information of the fact should always be given to the Collector without delay.

**253.** No Civil Court officer should be appointed a receiver except with the sanction of the District Judge, which should only be given in petty cases where the duties of the receivership cannot interfere with the officer's ordinary work, and in no case shall remuneration be given to an officer so appointed.

## CHAPTER 14

### APPEALS AND REMAND

**254.** All memoranda of appeal in the subordinate appellate Courts shall be presented in open Court either by the party in person or his "recognized" agent, within the meaning of that term in Or. 3, r. 2, Or. 27, r. 2, and sec. 85, C. P. Code or by a duly appointed pleader.

**NOTE.**—Valuations for purposes of jurisdiction and for payment of court-fee shall be separately shown.

**255.** (1) In every case in which the memorandum is presented by a pleader, the grounds of appeal shall be drawn and signed by a pleader, who, at the foot of the memorandum of appeal, shall subscribe the following statement:—

"I certify that I have examined the papers supplied to me and that, in my opinion, there are good grounds, as above set forth, for this appeal; and I undertake to appear and support the appeal before the appellate Court."

(2) If an appeal is presented by a party in person, or his "recognised agent" and a pleader is afterwards engaged, he shall before being allowed to appear to support the appeal, subscribe and file a memorandum containing the above certificate.

(3) This rule shall apply *mutatis mutandis* to the memorandum of cross-objection.

**256.** All memoranda of appeal presented, which on examination, are found to comply with the requirements of Order 41, Rule 1 of the Code of Civil Procedure, shall be entered in the Register of Appeals [High Court Forms Nos. (R) 6(i) to (iii) and (R)8] irrespective of their possible rejection, or return, for failure on the part of appellants to pay the deficit court-fees demanded by the Court.

**257.** When an appeal is presented after the expiry of the period of limitation, it should not be admitted without due notice to all parties concerned, so as to secure, at the stage of admission, the final determination of any question of limitation affecting the competency of the appeal.

**258.** Appeals should not be transferred to the Court of an Additional District Judge or a Subordinate Judge until they are ready for hearing. Notices should be issued and all other preliminary work done by the office of the District Judge. (See, rule 760.)

**259.** Every effort should be made to dispose of a regular appeal within a year from its being filed. District Judges will closely watch the disposal of appeals and see that as far as possible older appeals are given preference to later appeals.

**260.** Ordinarily appeals when ready for hearing should be transferred one day during the latter part of each month to the different appellate Courts. The selection of appeals for such transfer should be made by the District Judge himself, who should for this purpose take into consideration the state of the files, civil and criminal, in the different Courts, the nature of the cases and other relevant matters so that the number of appeals transferred should not be more than such as each Court can be reasonably



expected to dispose of in the next succeeding \* month or months. The appellate Courts may also well be asked to send their requisition for appeals before each transfer, indicating the number of each class of appeals that they expect to be able to dispose of within the next one or two months.

NOTE.—More appeals should not be transferred to a Court so long as a sufficient number of cases already transferred remains undisposed of.

**261.** Appellate Courts should, after receipt of appeals by transfer, arrange their files in the way they think best and with a view to their being heard and disposed of, so far as possible, in chronological order.

**262.** If the day's work is thrown out for some reason and any appellate Court finds enough time to dispose of one appeal or more, he should send for the required number from the District Judge from the list of ready appeals fixed for that day.

**263.** If, on account of accumulation of arrears, any Court is regularly engaged in disposing of appeals, there can be no objection to the transfer to that Court of batches of appeals at more frequent intervals and *pari passu* with the rate of disposal there; provided that the pending list of the Court is watched by the District Judge to see that appeals are not accumulating in that Court while later appeals are being disposed of by other Courts.

**264.** In order to keep a watch over the disposal of appeals, a pending list should be kept and put up regularly before the District Judge both of all appeals pending and also of those pending in each individual Court in their serial numbers and on disposal the number should be crossed off. The period for which an appeal is pending after transfer to the Court concerned should be clearly indicated.

**265.** Appeals against interlocutory orders which hold up the progress of suits or proceedings in lower Courts, should be given precedence over all civil work other than that of a specially urgent nature and every endeavour should be made to dispose of such appeals quickly. A separate list should be kept of these appeals so that they may not be lost sight of.

NOTE.—In this connection attention is invited to foot-note No. 2 of the register showing the cases of which proceedings have been stayed [Form No. (S) 9].

**266.** If, on an inspection of the pending files of each Court, it is found that older appeals are long pending in some Court or Courts, the files of the appellate Courts should be equalised from time to time by withdrawing such appeals and re-transferring them to Courts having a lighter file.

**266A.** As soon as ready appeals are transferred or withdrawn and re-transferred to the different appellate Courts in batches, the District Judge shall notify the transfer in a list in form No. (M)1, suitably modified in the prescribed manner, with a note that further details regarding such appeals will be found in the list (M)1 of the transferee Court. The District Judge shall, at the same time, send a copy of his list to the Secretary of the local Bar Association for information to the pleaders concerned. The receiving Courts shall enter these appeals in form No. (M)1 on the date of receipt.

**267.** District Judges are expected to do as much civil appellate work as possible. If for any reasons they are prevented from complying with this instruction, such reasons should be noted in their annual administration reports.

NOTE.—In this connection, see also rule 260.

**265.** The rules above are not intended to fetter in any way the discretion of the District Judge to deal with special or peculiar situations in such a manner as he may consider fit and proper.

**266.** The above rules *mutatis mutandis* to miscellaneous appeals except that every effort should be made by all appellate Courts to dispose of such appeals within three months from their being filed. District Judges are expected to keep in their own files and dispose of as many miscellaneous appeals as possible.

**NOTE.**—In this connection attention is invited to foot-note No. 2 of the statement prescribed in Form No. (S) 9 showing the cases of which proceedings have been stayed.

**270.** Lower appellate Courts should see that copies of the original Court's judgment and decree filed with appeals are returned, without delay, on application by the parties concerned.

**271.** Cases in which findings are called for by the High Court shall take precedence over all civil work other than of a specially urgent nature. Such findings shall be submitted by the day named in the order of the High Court, unless an extension of time has been obtained from it on application with reasons in support of it.

**NOTE.**—This rule applies equally to cases sent under Or. 41, r. 25 by lower appellate Courts to trial Courts and should be strictly observed by the latter.

**272.** The Court to which reference is made under Or. 41, r. 25, for trial of issue, shall on returning its finding, certify at the foot thereof the amount of costs (showing the items in detail) incurred by each of the parties to the case at the retrial, with a view to such costs being provided for in the decree that may be finally passed by the High Court or the lower appellate Court.

**273.** When a suit is remanded, a statement of the costs incurred in the appellate Court is to be appended to its order, that the same may be charged to the losing party in the revised decree of the lower Court, when costs are to follow the event.

**274.** When a suit is remanded for retrial and it again comes up in appeal after the next trial, the number and date of the previous appeal should be quoted in the memorandum of the subsequent appeal.

**275.** (1) The appellate Court when returning the record of a case to the lower Court either on remand or under Or. 41, r. 25, shall draw the attention of the lower Court, in the letter forwarding the record, to any substitution or addition of parties that may have taken place during the pendency of the case in the appellate Court, and the lower Court shall in all cases check the entries and make the necessary alterations in its record and register of suits when the name of the deceased is to be found in it.

(2) In the case of appeals finally disposed of, all such amendments in the trial Court's records shall be made along with the necessary amendments in the appellate Court's records, in the office of the appellate Court concerned. When the copy of the judgment and the decree (*vide* Order 41, Rule 37, Civil Procedure Code) showing the substitutions is received in the lower Court, that Court shall cause the necessary alterations to be made in the register of suits when the name of the deceased appears in it.

**NOTE.**—As to appellate decree, see generally rule 133 *et seq.* and in particular rule 134(3) and Note 3 thereto.

## APPENDIX

### NOTIFICATION.

*Simla, the 15th August, 1925.*

**No. F.-576/24J.**—In pursuance respectively of section 29 and of Rule 28(b) of Order V of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), the Governor-General in Council is pleased to declare—

- (i) that the provisions of section 29 of the said Code shall apply to the Courts in Nepal specified in the Schedule hereto annexed and
  - (ii) that the service by such Courts in Nepal of any summons issued by a Court in British India under the Code of Civil Procedure, 1908 (Act V of 1908), shall be valid service.
2. The Foreign and Political Department Notification No. 327-E.O., dated the 31st January, 1907, is hereby cancelled.

#### Schedule.

##### *List of Nepalese Courts.*

Name of Amini Courts.	Names of British Post Offices on the border nearest to the Amini Courts.
<b>Under the Birganj Goshwara Court—</b>	
Birganj Amini Court of District Parsa ..	Raxaul (District Champaran).
Kalalya Amini Court of District Bara ..	Adapur (District Champaran).
Kadarbana Amini Court of District Rautahal ..	Bairagnia (District Mazaffarpur).
<b>Under the Mahotari Sarlahi Goshwara Court—</b>	
Jaleshwar Amini Court of District Mahotari ..	Madhwarpur (District Darbhanga).
Sarlahi Amini Court of District Sarlahi ..	Sonbarsa (District Darbhanga.)
<b>Under the Saptari Goshwara Court—</b>	
Hanumannagar Amini Court of District Saptari ..	Kanauli Bazar (District Bhagalpur)-
Siraha Amini Court .. .. .	Jainagar (District Darbhanga.)
<b>Under the Morang Biratnagar Goshwara Court—</b>	
Biratnagar Amini Court of the Morang Rangeli District.	Jogbani (District Purnea).
<b>Under the Morang Jhapa Goshwara Court—</b>	
Jhapa Amini Court of District Jhapa ..	Dighabank (District Purnea)

Name of Amini Courts,	Names of British Post Offices on the border nearest to the Amini Courts-
<b>Under the Bethari Goshwara Court—</b>	
Bethari Amini Court of District Majhkhand ..	Nautanwa Bazar (District Gorakhpur).
Parasi Amini Court of District Parasi ..	Thuthibari (District Gorakhpur).
Butwal Chhoti Court of District Butwal Bazar ..	Shohratganj (District Basti).
<b>Under the Butwal Taulihwa Khajni Goshwara Court—</b>	
Taulihwa Amini Court of Khajahni ..	Shohratganj (District Basti).
Shiuraj Chhoti Court of Shiuraj ..	Shohratganj (District Basti).
Dhudhwa Pahar Amini Court ..	Jarwa (District Gonda).
<b>Under the Nepalganj Bankey Bardia Goshwara Court—</b>	
Bankey Amini Court of District Bankey ..	Rupaidiha (District Bahraich).
Bardia Amini Court of District Bardia ..	Katarniaghat (District Bahraich).
<b>Under the Trinagar Goshwara Court—</b>	
Kailali Amini Court of District Kailali ..	Dudhuaghat (District Kheri).
Kanchanpur Amini Court of District Kanchanpur ..	Paliyakalan (District Pilibhit) and Tanakpur (District Pilibhit).
Darchula Amini Court of District Baitadi ..	Jhula Ghat (District Almora).
<b>Under the Dhankuta Gaunda Ilaga—</b>	
Taplejung Amini Court ..	Sukhia Pokhari (District Darjeeling).
<b>Under the Ilam Guanda Ilaga—</b>	
Ilam Amini Court ..	Sukhia Pokhari (District Darjeeling).

## **PART II.—Rules Relating to Acts other than the Civil Procedure Code and the Court-Fees Act.**

### **CHAPTER 15**

#### **1. The Law of Landlord and Tenant.**

**276.** Every summons in any suit for arrears of rent, not being a suit in which enhancement is sought, brought under the provisions of Bengal Tenancy Act, 1885, or the Cooch Behar Tenancy Act, 1910, shall command the defendant to appear on a date to be fixed by the Court. The Court should so fix the date that the interval after the service of the summons will be not less than fourteen clear days and not more than is reasonably necessary, regard being had to the number of cases for trial.

**277.** Each suit shall be called in its turn on the day fixed for hearing, and in every case in which it shall be shown that the defendant has been duly served with the summons in proper time to enable him to appear and defend the suit, but the defendant does not, either in person or by any authorised agent or pleader, appear or make answer to the suit, the case shall be forthwith taken up and heard *ex parte*, unless in any particular case the Court, for special reasons to be recorded in the proceedings, shall think fit to order otherwise:

Provided, nevertheless, that no suit for arrears of rent shall be called on and tried *ex parte* when the summons shall not have been served at least fourteen clear days before the day of hearing.

**278.** When it appears that the summons has not been duly served, or that fourteen clear days have not elapsed from the date of the due service of the summons, the case shall be adjourned to a date not less than fourteen clear days from the date of the due service of the summons.

**279.** Where the defendant appears and makes answer or desires to contest the claim, the case shall ordinarily be placed in the list of defended causes and come on in its turn: provided that if the case appear likely to be a short one, the presiding Judge may take it up and try it immediately or may set it down for hearing on an early day, if either of such courses appear to him to be expedient with reference to the state of his file or the convenience of the parties.

**280.** In cases in which co-sharer landlords subsequently join in a rent suit under section 148A (3) of the B. T. Act or section 40A (2) of the Cooch Behar Tenancy Act and the added claim raises the total value of the suit above Rs. 50, no retrospective demand of court-fee or process-fee at an increased rate can be made on petitions, etc., filed before the co-sharer landlords were joined as co-plaintiffs.

**281.** When separate suits by co-sharer landlords are consolidated under the provisions of section 148A(4) of the B. T. Act, or section 40A(3) of the Cooch Behar Tenancy Act, the files of the records of the separate suits should be kept intact up to the date of consolidation and thereafter attached to the corresponding files of the main suit, the evidence and orders after consolidation appearing only in the main suit.

**282.** The written authority referred to in sections 145 and 187 of the B. T. Act, 1885, or section 38 of the Cooch Behar Tenancy Act, 1910, must be stamped as a power-of-attorney under Article 48, Schedule I of the Indian Stamp Act (III) of 1899.

**283.** In cases where it appears to a Civil Court that the provisions of sections 56 and 57 of the B. T. Act have been evaded without reasonable cause, a report of the matter should be made to the Collector as contemplated by section 58 (4) of the Act.

**284.** If the Court is satisfied for reasons which should be recorded, that service by post either in addition to or in substitution of any other mode of service would be more convenient and effective, it may, in suits for recovery of rent, direct under section 148(f) B. T. Act, 1885 or section 40(f) of the Cooch Behar Tenancy Act, 1910, that summons be forwarded by registered post with "acknowledgment due."

**285.** (1) In original decrees in suits between landlord and tenant for the recovery of rent under the Bengal Tenancy Act or the Cooch Behar Tenancy Act in the place of Form No. 2 (Simple Money Decree) prescribed by Schedule I, Appendix D, of the C. P. Code, Form No. (J) 28 or (J) 28B, Volume II, as the case may be, shall be used.

(2) In decrees in suits between landlord and tenant for recovery of rent, the serial number or numbers borne by the tenancy in the record-of-rights and the area and rental according to such record shall be given.

**286.** Separate decrees under proviso (ii) of section 144 (2), B. T. Act, shall be drawn up on separate sheets of the form for decrees.

**NOTE.**—Sub-numbers should be given to the separate decrees thus drawn up in respect of each tenancy.

### Notices of Transfer, Process fees, etc.

**287.** (1) Before a sale under section 13(1) or section 18 or section 26C(3) of the Bengal Tenancy Act, is confirmed by a court, the purchaser shall file a notice of transfer in the prescribed form, giving the particulars of the transfer and the names of all landlords and also in cases coming under section 26C(3) of all co-sharer tenants, who are not parties to the transfer and as many copies of notice giving the said particulars as are necessary in order that one copy may be sent to each such landlord and also to each such co-sharer tenant, where necessary.

Provided that where several tenancies held under the same landlord or with the same co-sharer tenants are included in one document of transfer, all such tenancies may be included in one notice for each such landlord or each such co-sharer tenant.

(2) With each copy of the notice, the purchaser shall file—

(i) a postal registration envelope or where a postal registration envelope is not readily available an ordinary envelope with the name and address of the party on whom the notice is to be served duly written thereon,

(ii) the requisite postal stamp for sending the notice by registered post with acknowledgment due together with an acknowledgment slip duly filled in, and

(iii) a process-fee of annas two to be paid in court-fee stamp.

**NOTE.**—The required number of forms should be supplied to the party by the Court, free of charge.

**288.** Notices referred to in section 13 of the Cooch Behar Tenancy Act, 1910, shall be served—

(1) where there is a sole landlord, or where two or more persons are joint landlords and have a common agent such as is referred to in section 85 of the aforesaid Act, on such sole landlord or his agent or on such common agent, as the case may be, or

(2) where there are more than one landlord and no common agent has been appointed, on each joint landlord.

In cases where the usual procedure for service of process is found inconvenient or impracticable, such notices may be forwarded by post in a registered letter and an acknowledgment obtained.

**289.** The court shall forthwith serve the notices by registered post with acknowledgment due. If the notice is returned undelivered or the acknowledgment for it is not obtained, the notice shall be served by affixing a copy in the court, for a period of one month and such notice shall thereupon be deemed to have been duly served.

**290.** Managers appointed under sections 95 to 99 of the B. T. Act shall be bound by the following rules framed under section 100 of the Act:—

(1) Every manager, appointed under sections 95 to 99 of the B.T. Act, shall in all matters act in accordance with such orders as may, from time to time, be issued by the District Judge.

(2) The manager shall pay the Government revenue, rent, and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

(3) No manager is authorised to sell or mortgage any property nor to grant or renew a lease for any period exceeding three years (or such shorter period as the Judge may direct) without the express sanction of the District Judge.

(4) The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense. The District Judge may disallow the whole or any portion of the expense incurred by any such act without his sanction and may make the manager liable for the amount.

(5) No manager shall have power to compromise any suit or relinquish any claim without the express sanction of the District Judge.

**291.** Every Civil Court trying a suit under section 106, or disposing of an appeal in such a suit, shall communicate to the Collector of the district, a note of its final decision in the case for incorporation in the final record-of-rights prepared under the B. T. Act, 1885.

**292.** Notices referred to in sections 9, 20(1) and (2), 21(3), paragraph 2 and 32, paragraph 3, of the Cooch Behar Tenancy Act, 1910, shall be served by the Court in the manner prescribed on payment of the process fee of the prescribed amount for such service.

**293.** The proclamation, referred to in section 53(2) of the Cooch Behar Tenancy Act, 1910, shall in addition to the places mentioned in that section and in the Code of Civil Procedure be also published in the Court house of the District and Sessions Judge, in the Malcutchery or Rent office of the tenure or under-tenure and at the local Thana.

## 2. The Provincial Small Causes Courts Act, 1887 (IX of 1887).

**284.** The following Rules of Practice shall be observed in Courts of Small Causes:—

(1) The summons shall ordinarily be served on the defendant seven clear days before the day on which the Court shall be held at which the cause is to be tried, unless the Court shall otherwise order; but a summons may be made returnable at a longer or a shorter date in the discretion of the Court, with reference to distance or to any other cause.

(2) The cause of action shall be transcribed from the plaint into the Small Cause sheet [Form No. (R)10A] and the substance of the cause of action shall be entered in the Register of Small Cause Court Suits [Form No. (R) 9].

(3) The substance of the evidence, the judgment, and the decree shall be entered in the Small Causes Book referred to above by the presiding Judge himself.

NOTE.—In case of review or applications under Or. 9, rr. 3, 9 and 13, the substance of evidence and judgment or order shall also be entered in the Small Causes Book. If necessary, separate foolscap sheets should be attached to the book.

(4) In cases in which the defendant has moved the Court for a review of judgment, and the Court is of opinion that such review should be granted, a very early date of hearing shall be fixed not exceeding fifteen days and the case should be disposed of as expeditiously as possible.

NOTE.—For rules regarding the maintenance, etc., of records of Small Cause Court suits, see rule 468 *et seq.*

## 3. The Administrator-General's Act, 1913 (III of 1913).

**295.** Where a subject of a State dies in British India, and it appears that there is no one in British India, other than the Administrator-General, entitled to apply to a Court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such Court of any Consular Officer of such State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to the following rules, think fit to impose, namely:—

I. Where the deceased has not left in British India any known heirs or testamentary executors, by him appointed, the local authorities, if any, in possession of the property of the deceased, shall at once communicate the circumstances to the nearest Consular Officer of the State of which the deceased was a subject in order that the necessary information may be immediately forwarded to persons interested.

II. Such Consular Officer shall have the right to appear, personally or by delegate, in all proceedings on behalf of the absent heirs or creditors of the deceased until they are otherwise represented. [Government of India, Home Department Notification No. F620/32-Judicial, dated the 25th July, 1932, issued under section 57 of the Administrator-General's Act, 1913.]

### Schedule.

- |                              |                 |
|------------------------------|-----------------|
| 1. United States of America. | 6. Netherlands. |
| 2. Argentine Republic.       | 7. Persia.      |
| 3. Belgium.                  | 8. Peru.        |
| 4. Costa Rica.               | 9. Siam.        |
| 5. Denmark.                  | 10. Sweden.     |



**297.** In uncontested proceedings under the Guardian and Wards Act, 1900, it shall be competent to the Court or Judge exercising jurisdiction therein to permit or direct, except when otherwise provided by any law or rule for the time being in force, that any particular fact or facts may be proved, or evidence upon any application may be given, by affidavit.

**298.** In cases where accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court shall observe the following rules as to the class of persons who should be appointed to examine the accounts and the scales of remuneration to be granted to them:—

(1) Where the net annual income of the ward's property exceeds Rupees two thousand the Court may appoint either (i) persons who are holders of certificates granted by the Central Government under section 144 of the Indian Companies Act, 1913, or (ii) persons who are members of any institution or association who have been declared by the Central Government to be entitled to be appointed and to act as auditors of Companies throughout the whole of India except Part B States, or (iii) any legal practitioner who in the opinion of the court is qualified in examining accounts.

(2) In a case where the net annual income does not exceed Rupees two thousand, the Court may appoint either (i) any officer of the Court, or (ii) a legal practitioner who in the opinion of the Court is qualified in examining accounts.

(3) The amount of remuneration of the officer, or certified auditor or legal practitioner, as the case may be, will not exceed two per cent. where the net annual income is below Rupees two thousand and in cases where the income is above Rupees two thousand the remuneration shall be two per cent. up to Rupees two thousand and one per cent. thereafter and will be payable out of the funds of the ward's estate.

(4) In a case where the estate is a very big one and the accounts are heavy, the court may appoint any certified auditor and fix such remuneration as may be reasonable in the circumstances.

**299.** Monies belonging to wards shall not, without the leave of the District Judge, be invested in securities other than those mentioned in clauses (a), (b), (bb), (c) and (d) of section 20 of the Indian Trusts Act, 1882, or be deposited in any Bank other than a Government Savings Bank.

**300.** Monies payable to wards shall be paid to their guardians direct, if possible, or by post, if direct payment is not possible. When for special reasons, to be recorded in writing, payment of an amount is made to the Advocate or pleader of a guardian, the Court shall insist on filing by the Advocate or pleader of a proper receipt from the guardian showing that the amount has been paid to him.

Note 1.—An advocate or a pleader failing to file the receipt within a reasonable time shall be required to deposit into the Court the amount received by him.

Note 2.—The receipt shall be kept with the record of the case to which it relates. During examination of the accounts of the ward's properties, the genuineness of the receipt shall be inquired into by the person appointed to examine the accounts.

### **5. The Indian Succession Act, 1925 (XXXIX of 1925).**

#### **A.—Uncontested Probate and other Proceedings.**

**301.** In uncontested proceedings under the Indian Succession Act, 1925, it shall be competent to the Court or Judge exercising jurisdiction therein to permit or direct, except when otherwise provided by any law or rule for

the time being in force, that any particular fact or facts may be proved, or evidence upon any application may be given by affidavit.

**NOTE.**—When a District Delegate, acting under section 288 of the Indian Succession Act, 1925, returns the petition and any documents filed therewith to the person by whom the application was made, he should forward to the District Judge, and not to the Record-room, such other papers in connection with the application as may have been produced before him. [For classification of such papers, see Note 1 to clause (d) of rule 343.]

**B.**—Government Regulations relating to the preservation and inspection of wills under section 294 of the Succession Act (Government of Bengal, Notification No. 6984-J, dated the 18th August, 1933).

*Custody and Preservation of Wills of which Probate or Letters of Administration with the will annexed have been granted.*

**302.** All original wills presented to the District Judge or District Delegate, in accordance with the provisions of section 276, shall, immediately upon the passing of the order of granting Probate or Letters of Administration under sections 289 and 290, be entrusted to the care of the head clerk or the chief ministerial officer of the District Judge's or District Delegate's Court, who shall be responsible for their safe custody.

The said officer shall, on the receipt of each original will, cause a copy of the same to be carefully entered in a register to be kept for that purpose, and after the copy has been examined by him and found to be a true copy, he shall certify the copy to be a true copy. The said officer shall also cause to be prepared an alphabetical index, in which the name of the testator, etc., and the number and page of the register in which a copy of the will is entered, shall be recorded in Form No. (R) 11.

**NOTE 1.** Every volume of the register in which copies of wills are made must be ruled and the pages numbered before it is taken into use, a note being made at the beginning of the volume of the number of pages it contains. Each copy should follow immediately upon that which precedes it, and should be written in a clear hand, corrections being written above the line and initialled by the officer who compares the copy with the original, and no erasures being permitted. All copies should be made immediately on receipt of the original, and should be compared with the original by the Sheristadar or head clerk, who should certify at the bottom of each page and at the end of the copy that such comparison has been made and that the copy is correct. Should the number of pages at the end of a register be insufficient to include a copy of the will which would ordinarily be inserted there, a fresh volume should be taken into use, and the blank sheets scored across, a note being added at the beginning of the volume "Pages to blank."

**NOTE 2.**—Each volume of the register should be legibly marked on the back with its own serial number, with the year to which it relates and with the serial numbers of the first and last copies contained in it.

**304.** The original will shall, after being copied, be placed in a sealed cover (to be sealed in the presence of the District Judge or District Delegate), and the sealed cover containing the original will shall be deposited in a fire-proof safe, which shall be kept in the office room of the head clerk or other officer aforesaid to whom the safe custody of the will may have been entrusted. Where the Court has no iron safe, the will may be placed in small block tin box, the key of which shall remain with the District Judge or District Delegate; and the District Registrar or Sub-Registrar of the place shall, if the District Judge or District Delegate requires him, lock up this box in his fire-proof safe, giving it to the District Judge or District Delegate on his written demand from time to time.

**NOTE 1.**—Each original will shall have endorsed upon it the number and page of the volume in which its copy is entered, and shall be kept in a separate envelope marked outside with the same particulars and with the testator's name and the year of execution. Wills should be kept in the safe or box in their proper serial order.

**NOTE 2.**—Whenever an original will is removed from the custody of the officer responsible for it, a note of the date of despatch and return should be made against the entry in the Index prescribed in rule 303, and for such entries sufficient space should be left in the form.

**NOTE 3.**—In all cases when an original will is removed from the custody of the officer in charge, he should note upon the envelope (which should be retained in its proper place) the date and place of removal, scoring out the entry, with a note of the date, on return. Careful examination should be made, of all wills so returned, to ensure that no alterations have been made.

**305.** As soon as possible after the 31st December and not later than the 31st January of every year, each District Delegate shall transmit to the Court of the District Judge all the original wills in respect of which a grant of Probate or Letters of Administration have actually been made during the year, together with the register containing the copies thereof and the alphabetical index, and these shall then be preserved along with the wills deposited in the Court of the District Judge subject to the same regulations as to custody, inspection, etc.

#### *Inspection of Wills.*

**306.** The District Judge or District Delegate may, upon an application in writing for inspection of the register and of any will mentioned in such register, make an order permitting the inspection of the same: Provided that no such order shall be made unless in such application are set forth the names, residences and occupations of the applicant and of the person or persons, if any, to be present on his behalf at the inspection, and the reason for which an order of inspection is desired.

**307.** The order for inspection shall state the date on and the hours within which the inspection may be had. No inspection shall be allowed under these regulations otherwise than in the presence of the District Judge or District Delegate or of the chief ministerial officer of his Court or such other officer who may have charge of the will as the District Judge or District Delegate shall direct. The officer present at the inspection shall be responsible for the will not being taken out of sight during the inspection and also that no erasure or alteration or mark is made on it. No person inspecting a will under these regulations shall be permitted during the inspection to have in his possession or have access to a pen and ink, but a person so inspecting may be permitted to make short notes in pencil on a slip of paper to be supplied by the officer present at the inspection.

**308.** The following fees shall be levied in court-fee stamps for the inspection of wills:—

(i) For the inspection of an original will, court-fee stamp of the value of one rupee.

(ii) For the inspection of a copy of a will in the register, court-fee stamp of the value of eight annas.

#### **C.—High Court Rules relating to the custody and preservation, production and copy of Wills in general.**

**309.** All wills as soon as they are filed in a Court for the purpose of being proved, shall be made over for safe custody, in the presence of the District Judge or District Delegate, either to the head clerk or to the Sheristadar of the Court, who shall give a receipt for them. The said

officer shall, on receipt, copy or cause the wills to be copied in the register kept for that purpose and entered in the alphabetical index where a note shall subsequently be made showing, as to each will, whether Probate or Letters of Administration with the will annexed have been granted or not, as provided for in rule 303 *ante*.

**310.** All wills of which Probate or Letters of Administration with the will annexed are not granted shall be preserved in the manner indicated in rule 304 *ante*. Provided that when an application for Probate or Letters of Administration with the will annexed is withdrawn, or dismissed for default or non-prosecution, the will may be returned to the party filing it, on his application except where there is any provision of the law requiring the Court to retain it. If any forgery is suspected, the Court may keep the will pending such action as it may deem proper.

**311.** No original will after being placed in the fireproof safe as provided for in rule 304 above shall be removed therefrom except under an order in writing of the District Judge or District Delegate made for the purpose of—

(1) its being produced in Court on the hearing of the application for the purpose of which it was filed, or on the hearing of an application for the revocation of a grant or Probate or Letters of Administration with the will annexed, or on the hearing of a case in the District Judge's or District Delegate's Court in which it is necessary to put such will in evidence :

NOTE.—The Sheristadar or the head clerk if the Court having custody of the will shall personally produce the will before the Court on the day of hearing, and if the will has to be retained in Court, shall take a written receipt from the Bench Clerk. The latter officer shall be responsible for the custody of the will so long as it remains in the Court.

(2) its being copied ;

(3) an inspection of such will ;

(4) its being transmitted to the Court of the District Judge under rule 305 above.

(5) complying with the requisition under rule 312.

**312.** (1) Upon a requisition from any Court at a different station for the production of an original 'will' in a case pending in such Court, the District Judge or District Delegate shall, whether the original 'will' has been proved or not, forward the 'will' in a sealed packet by registered post, with acknowledgment due, addressed to the presiding Judge of the Court making the requisition. When the Court making the requisition is located at the same station as that of the District Judge or District Delegate, the 'will' shall be sent in a sealed packet in the custody of a responsible officer to the said Court for production. The officer to whom an original 'will' is so entrusted shall deliver the same to the presiding Judge of the Court.

NOTE.—When the record of a case referred to in rule 343(d) *post* or an original 'will' is called for in connection with an appeal or case pending in the High Court, the District Judge or District Delegate shall, whether the original 'will' has been proved or not, forward the same separately in a sealed packet by registered post, with acknowledgment due, addressed to the Deputy Registrar, Appellate Side or Original Side, as the case may be, with reference to the requisition.

(2) The Presiding Judge shall, on receipt of the 'will' whether sent by post or through a responsible officer, take all necessary precautions for the safe custody and preservation of the 'will' until he has returned the same in a sealed packet through the officer to whom it was entrusted for production, or by registered post, with acknowledgment due, to the District

Judge or District Delegate in whose Court the 'will' was filed for the purpose of the application for the grant of Probate or Letters of Administration.

**NOTE.**—When the 'will' is called for for production at the instance of a party in any Court, the District Judge or District Delegate shall not comply with the requisition for the same unless it is certified that a sum sufficient to cover all the necessary expenses for transmission and re-transmission thereof has been deposited.

**313.** (1) Applications for a copy of an original will shall be submitted to the District Judge or District Delegate, and such copy shall only be granted subject to the conditions which attach to the inspection of original wills.

(2) For copies, the same fee as for inspection shall be levied in court-fee stamps (*vide* rule 308) in addition to the copying charges at the usual rate obtaining in the civil courts which shall be levied in the same way as such charges are levied under the copying rules in Chapter 25, Part IV.

**314.** All applications for copies or inspection of wills and registers of wills shall be entered in the register prescribed by the High Court for applications for copies.

**315.** In cases where the fees collected for inspection and copy exceed Rs. 5 per mensem, District Judges or District Delegates may assign a moiety to the officer entrusted with the custody of the wills, the balance being credited to Government. In cases where the collections do not average more than Rs. 5 per mensem in one year, District Judges or District Delegates may sanction the payment to such officer of the full amount realised up to Rs. 30.

**NOTE.**—(a) The following certificate should be appended to each Bill in which the charges referred to in this rule are drawn :—

"Certified that the charges included in this bill have been drawn in accordance with the scale laid down by the High Court, and that each court-fee stamp for which commission is drawn is defaced with the words 'Commission allowed.' Certified also that the fees drawn on previous bills (with the exception of those deducted above) have been disbursed to the proper person and his receipt taken in the acquittance roll filed in my office."

(b) As there is a separate Budget allotment for the expenditure, the charges should be drawn on separate bills showing the allotment and expenditure up to date of each drawal. (A. G. B. No. T. M. 163, dated 6th May, 1892, and C. O. No. 16 of 18th August, 1892.)

**316.** (1) A register of caveats containing the following columns shall be maintained in manuscript in the office of the District Judge and the District Delegate :—

(i) Serial Number.

\_\_\_\_\_ filing the caveat,

(ii) Date of \_\_\_\_\_  
receipt of copy of caveat.

(iii) Name, description and residence of the caveator.

(iv) Name, description and residence of the testator.

(v) Action taken.

(vi) Remarks,

(2) In this register shall be entered all caveats lodged and all copies of caveats received under sub-sections (2) and (3) of section 284, Indian Succession Act, before application is made for the grant of Probate or Letters of Administration.

(3) Such caveats and copies shall be kept in a guard file and preserved in the office until the filing of a connected application for Probate or Letters of Administration. Upon the filing of any such application, the relevant caveat or copy shall be removed from the guard file and made part of the

record of the proceeding relating to the application. When this is done, the fact should be noted in column 6 of the register.

**D.—Jurisdiction of Subordinate Judges and Munsifs.**

**317.** (1) The Courts noted below have been invested with the functions of a District Judge under section 388 (1) of the Indian Succession Act, 1925, within the limits of the jurisdiction shown, respectively, against their names, under the notification so shown:—

Courts.	Local limits.	Notification.
<i>Bankura.</i>		
The Subordinate Judge ..	Sadar Munsifi ..	G. B. J. D. No. 6244J., dated the 13th July, 1927.
The Senior Munsif of Vishnupur	Own jurisdiction	Ditto.
<i>Birbhum,</i>		
The Subordinate Judge ..	Suri Munsifi ..	Ditto.
The Senior Munsif of—		
Bolpur .. ..	Bolpur Munsifi ..	G. B. J. D. No. 4863J., dated the 6th June, 1934.
Rampurhat .. .	Own jurisdiction ..	G. B. J. D. No. 6244J., dated the 13th July, 1927.
The Munsif of Dubrajpur ..	Dubrajpur Munsifi ..	G. B. J. D. No. 4863J., dated the 6th June, 1934.
<i>Burdwan.</i>		
The Subordinate Judge ..	Sadar Munsifi ..	G. B. J. D. No. 6244J., dated the 13th July, 1927.
The Subordinate Judge of Asansol.	Asansol Munsifi ..	Ditto.
The Senior Munsif of Katwa ..	Own jurisdiction ..	Ditto.
The Munsif of Kalna .. .	Ditto ..	Ditto.
<i>West Dinajpur-Darjeeling.</i>		
The Subordinate Judge of—Darjeeling.	Darjeeling ..	G. W. B. J. D. No. 6006J., dated the 31st October, 1947.
West Dinajpur and Jalpaiguri	Balurghat Munsifi and Jalpaiguri Munsifi.	G. W. B. J. D., No. 6393J., dated the 2nd December, 1947.
Malda .. ..	Own jurisdiction ..	Ditto.
The Senior Munsif of—		
Balurghat .. ..	Ditto ..	G. B. J. D., No. 5795J., dated the 13th July, 1928.
Jalpaiguri .. ..	Ditto ..	G. B. J. D., No. 6244J., dated the 13th July, 1927.
The Munsif of—		
Raiganj .. ..	Ditto ..	Ditto.
The itinerant Munsif at Siliguri, Kurseong and Kalimpong.	Siliguri, Kurseong and Kalimpong Munsifa.	G. W. B. J. D. No. 6006J., dated the 31st October, 1947.

Courts.	Local limits.	Notification.
<i>Hooghly.</i>		
The Senior Subordinate Judge	Sadar Munsifi ..	G. B. J. D. No. 6244J., dated the 13th July, 1927.
The Senior Munsif of— Arambagh .. ..	Own jurisdiction ..	Ditto.
Serampore .. ..	Ditto ..	Ditto.
<i>Howrah.</i>		
The Senior Subordinate Judge	Howrah Munsifi ..	Ditto.
The Munsif of— Uluberia .. ..	Own jurisdiction ..	Ditto.
Amta .. ..	Own jurisdiction ..	G. B. J. D. No. 4455J., dated the 15th December, 1943.
<i>Midnapore.</i>		
The Senior Subordinate Judge	Sadar Munsifi ..	G. B. J. D. No. 6244J., dated the 13th July, 1927.
The Senior Munsif of— Contai .. ..	Own jurisdiction ..	Ditto.
Tamluk .. ..	Ditto ..	Ditto.
The Munsif of— Ghatal .. ..	Own jurisdiction ..	G. B. J. D. No. 6244J., dated the 13th July, 1927.
Jhargram .. ..	Ditto ..	Ditto.
Danton .. ..	Ditto ..	G. B. J. D. No. 2354J., dated the 8th June, 1943.
Garhbeta .. ..	Ditto ..	G. B. J. D. No. 1834J., dated the 22nd May, 1946.
<i>Murshidabad.</i>		
The Subordinate Judge ..	Berhampore Munsifi ..	G. B. J. D., No. 6244J., dated the 13th July, 1927.
The Senior Munsif of— Jangipur .. ..	Own jurisdiction ..	Ditto.
Kandi .. ..	Ditto ..	Ditto.
The Munsif of Lalbagh ..	Ditto ..	Ditto.
<i>Nadia,</i>		
The Subordinate Judge ..	Krishnagar Munsifi ..	G. W. B. J. D. No. 6393J., dated the 2nd December, 1947, as amended by G. W. B. J. D. No. 2876J., dated the 14th June 1948.
The Munsif of Ranaghat ..	Own jurisdiction ..	B. J. D. No. 6244J., dated the 13th July, 1927.
<i>24 Parganas.</i>		
The two Senior Subordinate Judges.	Sadar Munsifi of Alipore	G. B. J. D. No. 6244J., dated the 13th July, 1927.
The Senior Munsif of— Baraset .. ..	Own jurisdiction ..	Ditto.
Baruipur .. ..	Ditto ..	Ditto.
Basirhat .. ..	Ditto ..	Ditto.
Diamond Harbour ..	Ditto ..	Ditto.
Sealdah .. ..	Ditto ..	Ditto.
Bongaon .. ..	Ditto ..	Ditto.

(2) Under the provisions of section 265 of the Indian Succession Act, 1925, the High Court have appointed *ex officio* as District Delegates under that Act within the limits of the jurisdiction noted against their names the following Subordinate Judges and Munsifs:—

Courts.	Local limits.	Notification.
<i>Bankura.</i>		
The Subordinate Judge ..	Sadar Munsifi ..	H. C. No. 8990A., dated the 25th June, 1927.
The Senior Munsif of— Bishnupur	Own jurisdiction ..	Ditto.
<i>Birbhum.</i>		
The Subordinate Judge ..	Suri Munsifi ..	H. C. No. 8990A., dated the 25th June, 1927.
The Senior Munsif of— Bolpur ..	Bolpur Munsifi ..	H. C. No. 9918A., dated the 22nd May, 1934.
Rampurhat ..	Own jurisdiction ..	H. C. No. 8990A., dated the 25th June, 1927.
<i>Burdwan.</i>		
The Subordinate Judge ..	Sadar Munsifi ..	H. C. No. 8990A., dated the 25th June, 1927.
The Subordinate Judge of Asansol.	Asansol Munsifi ..	Ditto.
The Senior Munsif of Katwa	Own jurisdiction ..	Ditto.
The Munsif of Kalna ..	Ditto ..	Ditto.
<i>West Dinajpur-Darjeeling.</i>		
The Subordinate Judge of=	Own jurisdiction ..	H. C. No. 11015A., dated the 11th November, 1947.
Darjeeling ..	..	..
West Dinajpur and Jalpaiguri	Balurghat Munsifi and Jalpaiguri Munsifi.	H. C. No. 11066A., dated the 18th November, 1947.
Malda ..	Own jurisdiction ..	Ditto.
The Senior Munsif of— Balurghat ..	Balurghat Munsifi ..	H. C. No. 8990A., dated the 23rd June, 1928.
Jalpaiguri ..	Own jurisdiction ..	Ditto.
Malda ..	Ditto ..	H. C. No. 11066A., dated the 18th November, 1947.
<i>Hooghly.</i>		
The Senior Subordinate Judge	Sadar Munsifi ..	H. C. No. 8990A., dated the 25th June, 1927.
The Senior Munsif of— Arambagh ..	Own jurisdiction ..	Ditto.
Serampore ..	Ditto ..	Ditto.
<i>Howrah.</i>		
The Subordinate Judge (whether permanent or officiating).	Executive district of Howrah.	H. C. No. 14974A., dated the 9th November, 1926.
Uluberia ..	Ditto ..	H. C. No. 8990A., dated the 25th June, 1947.



Courts.	local limits.	Notification.
<i>Midnapore.</i>		
The Senior Subordinate Judge	Sadar Munsifi ..	H. C. No. 8990A., dated the 25th June, 1927.
The Senior Munsif of—		
Contai ..	Own jurisdiction ..	Ditto.
Tamluk ..	Ditto ..	Ditto.
The Munsif of—		
Danton ..	Danton Munsifi ..	H. C. No. 2153A., dated the 25th July, 1929.
Garhbeta ..	Garhbeta Munsifi ..	H. C. No. 20139A., dated the 13th December, 1929.
Ghatal ..	Own jurisdiction ..	H. C. No. 8090A., dated the 25th June, 1927.
Jhargram ..	Ditto ..	Ditto.
<i>Murshidabad.</i>		
The Subordinate Judge ..	Perhampore Munsifi	H. C. No. 8990A., dated the 25th June, 1927.
The Senior Munsif of —		
Jangipur ..	Own jurisdiction ..	Ditto.
Kandi ..	Ditto ..	Ditto.
The Munsif of Lalbagh ..	Ditto ..	Ditto.
<i>Nadia.</i>		
The Subordinate Judge ..	Krishnagar Munsifi ..	H. C. No. 11066A., dated the 18th November, 1947 as amended by H. C. No. 3974A., dated the 2nd July, 1948.
The Munsif of Ranaghat ..	Own jurisdiction ..	H. C. No. 8990A., dated the 25th June, 1927.
<i>24-Parganas.</i>		
The two Senior Subordinate Judges.	Alipore and Sealdah Munsifis.	H. C. No. 5721A., dated the 10th August, 1949.
The Senior Munsif of—		
Baraset ..	Own jurisdiction ..	Ditto.
Basirhat ..	Ditto ..	Ditto.
Baruipur ..	Ditto ..	Ditto.
Diamond Harbour ..	Ditto ..	Ditto.
The Munsif of Bongaon ..	Ditto ..	Ditto.

- (3) Under the provisions of section 23(1) of the Bengal, Agra and Assam Civil Courts Act, 1887, the High Court has authorised the District Judge of 24-Parganas to transfer proceedings under the Indian Succession Act, 1925 (XXXIX of 1925) which cannot be disposed of by District Delegates, to any of the Subordinate Judges of 24-Parganas (*vide* H. C. Notification No. 5724A, dated the 10th August, 1949.)

**6. The Provincial Insolvency Act, 1920 (Act V of 1920).**

**318.** (1) The following rules may be cited as "The Provincial Insolvency Rules." The forms\* prescribed by these rules, with such variations as circumstances may require, shall be used for the matters to which they severally relate.

(2) Every insolvency petition shall be entered in the Register of Insolvency Petitions [Form No. (R)3] to be maintained in all Courts exercising Insolvency Jurisdiction, and shall be given a serial number in that register, and all subsequent proceedings in the same matter shall bear the same number, except proceedings which have to be registered as Miscellaneous Judicial cases under the Note to clause (38) of rule 776.

(3) All insolvency proceedings may be inspected at such times, and subject to such restrictions as the Court exercising insolvency jurisdiction may prescribe, by the Receiver, the debtor, and any creditor who has proved, or any legal representative on their behalf.

*Notices.*

(4) Whenever publication of any notice or other matter is required by the Act or by these Rules to be made in an Official Gazette, a memorandum referring to and giving the date on which such advertisement appeared, shall be filed with the record and noted in the order-sheet.

(5) Notice of an order fixing the date of the hearing of a petition under section 19 (2) shall be published in the Official Gazette and advertised in such newspapers as the Court may direct. A copy of the notice shall also be forwarded by the Court by registered letter to each creditor to the address given in the petition. The same procedure shall be followed in respect of notices of the date for the consideration of a proposal for composition or scheme of arrangement under section 38(1).

(6) Notice of an order of adjudication under section 30 may in addition to the publication in the Official Gazette required by the Act, be published in such newspapers as the Court may direct. When the debtor is a Government servant, a copy of the order shall be sent to the head of the office in which he is employed. The same procedure shall be followed in regard to notices of orders annulling an adjudication under section 37 (2)

**NOTE.**—If the insolvent has no assets wherefrom the cost of the publication of the notice of the order made under sec. 43(1) can be met, the Court should send the notice with a certificate to that effect to the Superintendent, Government Printing, West Bengal, whereupon the notice will be published in the *Calcutta Gazette* free of charge.

(7) The notice to be given by the Court under section 50 shall be served on the creditor or his pleader, or shall be sent by the Court through the post by registered letter.

(8) The notice to be issued by the Receiver under section 64 before the declaration of a final dividend to the persons whose claims to be creditors have been notified, but not proved, shall be sent through the post by registered letter.

(9) Notices of the date of hearing of applications for discharge under section 41 (1) shall be published in the Official Gazette and in such newspapers as the presiding Judge may direct, and copies shall be sent by the Court by registered post to all creditors whether they have proved or not.

\*The forms are reproduced as Nos. (J)57-(J)61, (P)75-(P)80 and (M)51-(M)53 in Volume II.

(10) A certificate of an officer of the Court or of the Official Receiver or an affidavit by a Receiver that any of the notices referred to in the preceding rules has been duly posted, accompanied by the Post Office receipt, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

(11) In addition to the prescribed methods of publication, any notice may be published otherwise in such manner as the Court may direct, for instance, by affixing copies in the Court-house or by beat of drum in the village in which the insolvent resides.

### *Receivers.*

(12) Every appointment of a Receiver shall be by order in writing signed by the Court. Copies of this order sealed with the seal of the Court should be served on the debtor, and forwarded to the person appointed.

(13) (i) A Court when fixing the remuneration of a Receiver should, as a rule, direct it to be in the nature of a commission or percentage of which one part should be payable on the amount realised, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividends.

(ii) When a Receiver realizes the security of a secured creditor, the Court may direct additional remuneration to be paid to him with reference to the amount of work which he has done and the benefit resulting to the creditors.

(14) (i) The Receiver shall keep a cash-book and such books and other papers as are necessary to give a correct view of his administration of the estate, and shall submit his accounts at such times and in such forms as the Court may direct. Such accounts shall be audited by such person or persons as the Court may direct. These shall include costs incurred on journeys necessary to the proper administration of the estate. The costs of the audit shall be fixed by the Court, and shall be paid out of the estate.

(ii) Any creditor may apply to the Court for an order directing the Receiver to hold a local enquiry in order to ascertain whether the debtor has excluded any of his properties from his schedule. The Court may before passing such an order call upon the creditor to deposit the costs likely to be incurred by the Receiver on account of journeys made for the purpose and may thereafter direct that such deposit shall be a first charge on the assets after payment of the Receiver's remuneration as provided by sub-rule (13).

(15) Any creditor who has proved his debt may apply to the Court for a copy of the Receiver's Accounts (or any part thereof) relating to the estate, as shown by the cash-book up to date, and shall be entitled to such copy on payment of the charges laid down in the rules of this Court regarding the grant of copies.

(16) In any case in which a meeting of creditors is necessary and in any case in which the debtor proposes a composition or scheme under section 38, the Receiver shall give 7 days' notice to the debtor and to every creditor of the time and place appointed for such meeting. Such notices shall be served by registered post.

*Proof of debts.*

(17) A creditor's proofs should be in Form No. (M)51 in volume II, with such variations as circumstances may require.

(18) In any case in which it shall appear from the debtor's statement that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor or by some other persons on behalf of all such creditors. Such proof should be in Form No. (M)52 in Volume II.

*Procedure where the debtor is a firm.*

(19) Where any notice, declaration, petition, or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall also add his own signature, *e.g.*, "Brown & Co., by James Green, a partner in the said firm."

(20) Any notice or petition for which personal service is necessary, shall be deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm within the jurisdiction of the Court, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there.

(21) The provisions of the last preceding rule shall, so far as the nature of the case will admit, apply in the case of any person carrying on business within the jurisdiction in a name or style other than his own.

(22) Where a firm of debtors file an insolvency petition the same shall contain the names in full of the individual partners, and if such petition is signed in the firm name the petition shall be accompanied by an affidavit made by the partner who signs the petition showing that all the partners concur in the filing of the same.

(23) An adjudication order made against a firm shall operate as if it were an adjudication order made against each of the persons who at the date of the order is a partner in that firm.

(24) In cases of partnership the debtors shall submit a schedule of their partnership affairs, and each debtor shall submit a schedule of his separate affairs.

(25) The joint creditors, and each set of separate creditors, may severally accept compositions or schemes of arrangement. So far as circumstances will allow, a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

(26) Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposals made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors; and the proposal made to each separate set of creditors shall be considered and voted upon by such separate set of creditors apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved, the adjudication order shall be annulled only so far as it relates to the estate, the creditors of which have confirmed the composition or scheme.

(27) If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such lastmentioned firm shall



**319.** (1) The following rules may be cited as the Provincial Insolvency (Supplementary) Rules, 1940.

(A) *Official Receivers.*

(2) The Official Receiver shall charge such commission and furnish such security as the State Government, in consultation with the District Judge, may direct.

(3) The Official Receiver shall be under the administrative control of the District Judge, who shall fix a time and place for the performance of his duties.

(4) Subject to the operation of these rules, the provisions of rule 318, Civil Rules and Orders, shall apply to the Official Receiver as to any other Receiver.

(5) The provisions of Rules 65-96, inclusive of Order XXI, Civil Procedure Code, 1908, and of rules 190, 191 and 196, Civil Rules and Orders, shall, *mutatis mutandis*, apply to all sales of property conducted by the Official Receiver, who directly or indirectly shall neither bid at any such sale nor acquire an interest in any such property.

(6) The accounts of the Official Receiver shall be audited annually by the Accountant-General, West Bengal, who shall submit an audit report through the District Judge to the State Government; and the cost of such audit shall be met by charging upon the gross annual realisations of such estate in the hands of the Official Receiver an audit fee to be fixed by the State Government.

(7) (a) The Official Receiver shall maintain the following registers:—

- (i) Diary (Form No. 1).
- (ii) Tour Diary (Form No. 2).
- (iii) Register of Insolvency cases (Form No. 3).
- (iv) Register of receipts and payments on account of immovable property (Form No. 4).
- (v) Register of receipts and payments on account of movable property (Form No. 5).
- (vi) Cash Book (Form No. 6).
- (vii) Estates Ledger Account (Form No. 7).
- (viii) Register of realisations and refunds on account of commission, travelling allowance and audit fees (Form No. 8).
- (ix) Dividend Register (Form No. 9).

(b) The Official Receiver shall issue printed and numbered receipts for all monies realised by him, and shall, to facilitate the audit of his accounts, retain printed and numbered counterfoils of all receipts so issued.

(c) The Official Receiver shall, once in every half year, prepare an abstract of Estates Ledger Account balances, and the Sheristadar of the District Judge shall compare such abstract with the balances shown in the Official Receiver's Cash Book, and shall reconcile the difference, if any, between the abstract and the Cash Book balances.

(8) All monies realised by the Official Receiver shall be paid by him into the Government Treasury on the day of receipt if possible, or on the morning of the next working day; provided that monies realised on tour shall be so paid not later than on the morning of the working day next following his return to headquarters.

(9) Collections representing audit fees or the commission and travelling allowance fees of the Official Receiver shall be credited by chalan to such account as the State Government may direct; and all other collections shall be separately credited by chalan to a personal ledger account to be opened in the name of the District Judge.

(10) (a) The Official Receiver shall draw his commission and travelling allowance from the Government account by submitting in duplicate, for refunds of revenue, bills in form T. R. 12 annexed to the Treasury Rules (Refund of Revenue) and in Bengal Form No. 2445.

(b) Every such bill shall, before submission to the Treasury, be checked by the District Judge's accountant, and sanction for such refund of revenue shall be accorded on each bill over the countersignature of such authority as may be vested with the powers to sanction refunds of revenue by the State Government in this behalf.

(c) One copy of every bill so countersigned shall be retained by the Official Receiver for the purposes of audit.

(11) (a) No expenditure above Rs. 10 from the personal ledger account shall be incurred except on the written order of the District Judge; and no expenditure shall be incurred for any estate without sufficient liquid assets to meet such expenditure, unless a creditor deposits the required amount.

(b) The Official Receiver shall, for the purposes of audit, maintain in manuscript form a record of the receipt and refund of every such deposit.

(12) All payments above Rs. 10 from the personal ledger account shall be made by cheque drawn by the District Judge.

(13) Dividends shall ordinarily be paid by cheques drawn in favour of creditors, but may be paid by cheques drawn in favour of the Official Receiver, who shall thereafter distribute the amount drawn, either in cash or by money order.

(14) Cheques drawn in favour of creditors shall as soon as drawn be posted in the Cash Book and Estates Ledger Account and shall then be made over to the actual payees or their accredited agents, and in all cases in which a cheque is issued, the dated receipt of the recipient shall be taken on the order-sheet of the case record and also on a voucher which shall, for the purposes of audit, be retained by the Official Receiver in accordance with the order of entries in the Cash Book.

(15) The Treasury shall, in respect of the personal ledger account standing in the name of the District Judge, issue a pass-book in which entries shall be made twice in every month; and at the close of every month, the Sheristadar of the District Judge shall compare such entries with the entries in the Official Receiver's Cash Book, and shall reconcile the difference, if any, between the pass-book and the Cash Book entries.

(16) All cheques not cashed within ninety days of the date of issue shall be cancelled and stopped by the District Judge, and no fresh cheque shall be issued until the cancelled cheque has been returned by the payee.

(17) From the personal ledger account, the Official Receiver shall have a permanent advance of Rs. 100, or such lesser sum as the District Judge may, after consultation with the High Court, direct, and shall recoup expenditure from such advance by presenting bills and vouchers to the District Judge, who, after checking the same, shall issue in favour of the Official Receiver a cheque for the amount passed.

(18) When the Official Receiver carries on any business belonging to a debtor, he shall keep a separate account of the trading, and shall incorporate in his Cash Book at the close of each week the net total receipts on account of such trading.

*(B) Committees of Inspection.*

(19) A Committee of Inspection shall consist of not more than five or less than three members (of whom two shall form a quorum), elected at a meeting conducted by the Receiver, who shall give fifteen days' clear notice thereof to those creditors who have proved their debts.

(20) A member of the Committee may resign his office by written notice delivered to the Receiver, and shall vacate it if he becomes insolvent or compounds or arranges with his creditors, or if he is absent from five consecutive meetings of the Committee, or if a majority of the insolvent's creditors who have proved their debts resolve that he be removed; and a vacancy occurring under this Rule shall be filled in the manner provided in Rule (19).

(21) No defect or irregularity in the election of any member shall invalidate any act done by him as a member in good faith.

(22) A meeting of the Committee may be called by the Receiver or by any member as required, and at least one meeting shall be held in every month.

(23) In the administration and distribution of the insolvent's assets the Receiver shall have regard to the directions of the Committee, and shall obtain its written consent before applying to the Court for leave to take action under section 59 of the Act.

(24) The Receiver shall, when required, submit to the Committee the Cash Book and other requisite papers; and at the end of every three months the Committee shall audit the entries in the Cash Book and Estates Ledger Account, and shall append thereto an audit certificate signed by each member.

(25) No member of the Committee shall, **except with the permission** of the Court, either directly or indirectly, by himself or by any other person, purchase any part of the insolvent's estate, or derive any profit out of any transaction arising out of the insolvency, or receive from the estate any payment for services rendered or goods supplied by him in connection with the administration thereof; and the Court may disallow any such purchase, and may recover from a member any such payment or profit.

(26) When services of a special nature, as distinct from ordinary duties, have been rendered by a member of the Committee in connection with the administration of an estate, the Court may allow him such remuneration as it thinks fit.

(27) Any trading account maintained by the Receiver shall, at least once in every month, be submitted by him to the Committee, and shall be examined and certified by the Committee or by any member appointed by it for this purpose.

*(C) Meetings of Creditors.*

(28) A meeting of creditors convened under Rule 318, Civil Rules and Orders, to consider a composition or arrangement proposed under section 38 of the Act shall be presided over by the Receiver, who shall record and forward to the Court the decision arrived at. Where no Receiver has been appointed, the Court itself shall preside.



**INSOLVENCY FORMS.****Form No. 1.**

Diary.

Attended Office at.....

Date.....

Left Office at.....

Day.....

Number of the insolvency case in the Official Receiver's register (the number of the case in the Court's register should be given within brackets).	Object for which it is set down for the day	Short note of the work done.	Realisations with sources of such realisations.	Number and date of the chalan by which amounts realised during the day are remitted to Treasury and the amount of the chalan.	Date to which it is adjourned if at all.	Remarks.
1	2	3	4	5	6	7

*N. B.*—At the end of each day the Official Receiver shall note in red ink the balance in hand of the Imprest and the unremitted balance of the realisations for the day.

**Form No. 2.**

Tour diary.

Date or dates if the journey extends over several days.	Details of journey including hours of departure from and return to the station.	Details of the case or cases in connection with which the journey is undertaken.	Short note of the work done in connection with each case.	Realisations with sources of such realisations.	Remarks.
1	2	3	4	5	6

*N. B.*—The amount entered in column 5 of this register shall also be shown in red ink in column 6 of the diary in Form 1.

Register of Insolvency cases.

Personalty.										
(i) Debts due and other pecuniary claims bearing those mentioned in column (ii).										
Serial No.	Serial number in the Court's register.	Name, father's name and address of the insolvent.	Date of vesting order.	Serial No.	Name, father's name and address of debtor.	Nature of debt or claim.	Amount.	Realisation, if any.	Date of realisation.	Remarks.
1	2	3	4	5	6	7	8	9	10	11
							Rs. a. p.			

## Personality.

(ii) Securities and shares in joint-stock companies.										(iii) Money.				
Serial No.	Description.	Face value.	In whose possession	If subject to the claim of third party, name and address of the party and the nature of the claim.	Market value of the debtor's interest.	Realisation.	Date of realisation.	Remarks.	Serial No.	In whose possession	Amount.	Realisation.	Date of realisation.	Remarks.
12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
		Rs. a. p.			Rs. a. p.						Rs. a. p.			

Personalty.						Realty.												
(iv) Other movables.																		
Serial No.	Description of class of property and the number of items of each class.	In whose possession.	Value stated in petition.	Value realised	Date of sale.	Remarks.	Serial No.	Description.	Extent.	Where situated.	Nature of insolvent's interest.	Value of insolvent's interest, as stated in the petition.	Nature of encumbrances, if any, and the name and address of the owner of encumbering interest.	Annual income if any.	Income realised with dates of realisation.	Price at sale.	Date of sale.	Remarks.
27		29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45
			Rs. a. p.	Rs. a. p.								Rs. a. p.		Rs. a. p.				

*Note.*—Entries in this register in connection with cases where the Official Receiver is appointed Interim Receiver should be made in red ink and in the remarks column in all cases the dates of discharge of the Official Receiver as Receiver or Interim Receiver should be noted.

**Register of receipts and payments on account of immovable properties.**

### Receipts.

### Payments.

[illegible]

**N.B.—(1) Arrears columns number should be written up in red ink.**

(2) When one estate has been fully administered, an abstract of these accounts should be entered in red ink at the end and a copy of this abstract should be submitted to the Court, along with another abstract of the accounts in Register 6.

**Form No. 5.**

**Register of receipts and payments on account of movable properties.**

*(Several pages of this register should be allotted to each estate and the name of the insolvent and the numbers of the case in the Official Receiver's register and in the Court's register should be noted on the top of each such page.)*

1	No. of item in Register No. 3.
2	Date of receipt.
3	From whom received.
4	On what account received.
5	Amount.
6	Remarks.
7	Date of payment.
8	To whom paid.
9	On what account paid.
10	Amount paid.
11	Remarks.

A summary of the accounts should be entered in red ink when the movables of any particular estate have been fully disposed of and a copy of this should be submitted to the Court along with the abstract of the accounts in Form No. 4 when the estate of the insolvent has been fully administered.

Receipt.				Expenditure.			
Date.	Particulars of receipt.	Amount.	Remarks.	Date.	Particulars. of expendi- ture.	Amount.	Remarks.
1	2	3	4	5	6	7	8
		Ra. a. p.				Ra. a. p.	

Realisations by Official Receiver.						Refunds to Official Receiver.					
Number and date of receipt.	Details.	Amount..			Date and number of chalan.	Date.	Details.	Amount.			Date and number of Bill.
		Commission.	Travelling allowance.	Audit fees.				Commission.	Travelling allowance.	Audit fees.	
By balance ..											

**Dividend Register.**

Serial No.	Names of creditors.	Amount. of proved debt.	First dividend at . . per cent. by order of the court.	Final dividend at . . per cent. by order of the court.	No. and date of the money order receipt If the amount is sent by money order.	No. and date of cheque	Signature of payee or his authorised agent.	Signature of attesting witness	Remarks.
1	2	3	4	5	6	7	8	9	10
		Rs. a. p.							



## 7. The Indian Stamp Act, 1899 (II of 1899)

**320.** When a Judicial Officer sees reason to doubt the genuineness of a stamp filed before him, the stamp should be forwarded to the Collector of the district, who will examine it, and satisfy himself, if possible, as to its character, reporting the result to the officer sending it. Care should be taken to retain an examined copy of any document bearing a stamp which may be forwarded to the Collector under the above orders.

**321.** In all cases in which the Civil Courts find any document which comes before them to have been stamped after its execution in contravention of law, they should give a copy of their judgment to the Government Pleader with a view to the prosecution, if necessary, by the Revenue authorities, of the parties concerned in such after-stamping.

**322.** In dealing with unstamped or insufficiently stamped instruments executed before the present Stamp Act came into force, the procedure to be adopted and the penalties to be levied should be regulated, not by the old Acts which have been repealed, but by the present Act.

**323.** The attention of all Courts is drawn to the provisions of section 38, Stamp Act, 1899, which require that when an instrument is impounded and admitted in evidence, an authenticated copy of it, together with a certificate stating the amount of duty and penalty levied, shall be sent to the Collector.

**NOTE.**—The presiding officer should see that a copy of the impounded document together with a certificate of realisation of duty and penalty is sent to the Collector promptly and the amount realised is sent to the treasury with all possible despatch.

**324.** When submitting a reference to the High Court under section 60 of the Stamp Act, the District Judge shall at the same time forward a copy of the same to the Superintendent and Remembrancer of Legal Affairs together with an expression of his opinion as to whether that officer should engage Counsel or Pleader to argue the matter before the High Court.

## 8. The Indian Registration Act, 1908 (XVI of 1908).

**325.** In any case in which a registered document is discredited by the judgment of a Court on grounds connected with registration, such as false personation, forgery, want of execution, presentation or admission of execution beyond the statutory period, minority, idiocy or lunacy of the executant, such Court shall send a copy of its judgment to the District Registrar within whose jurisdiction the instrument was registered.

## 9. The Specific Relief Act, 1877 (I of 1877)

**326.** (1) When any Court has passed a decree under section 39 of the Specific Relief Act, 1877, for the cancellation of an instrument under the Indian Registration Act, or when an appellate Court reverses a decree which has been so passed and registered, the Court shall forthwith cause a copy of the decree to be forwarded to the Registering Officer concerned.

(2) When an appellate Court reverses or when the Court of second appeal restores the decree of a Court of first instance of which a copy has been transmitted to the registering officer under the provisions of the Act above-mentioned, it shall transmit a copy of its decree to the Registering Officer.

### 10. The Indian Lunacy Act, 1912 (IV of 1912).

#### *Procedure to be followed by District Courts in sending lunatics to Mental Hospitals.*

**327.** The relevant rules relating to lunatics so found by inquisition, framed by the Government of Bengal, under section 91 of the Indian Lunacy Act, 1912, are reproduced below:—

72. Lunatics in respect of whom an order for detention in a Mental Hospital has been made under sections 46 or 67 of the Act shall be confined in the Mental Hospitals mentioned in Rule 6 in accordance with the provisions of that rule.

73. The provisions of Rules 34, 39, 40 and 41 shall apply *mutatis mutandis* to the case of lunatics in respect of whom an order of detention in a Mental Hospital has been made by a District Court. The Court shall obtain and forward with every lunatic a certificate by a Medical Officer as required by Rule 41(i)(ii), and it shall also be responsible for all the entries in the descriptive roll.

6. Lunatics of the class mentioned in column 2 of the following table shall be sent from the areas mentioned in column 3 of that table to the Mental Hospitals mentioned opposite thereto in column 1:—

Mental Hospital.	Classes of lunatics.	Area from which lunatics are to be sent.
(1) Mental Observation Ward, Bhowanipur, Calcutta.	All European, Anglo-Indian or Indian lunatics or alleged lunatics detained for observation.	European, Anglo-Indian lunatics or alleged lunatics—from any part of the Presidency of Fort William in Bengal; Indian lunatics or alleged lunatics—from Calcutta and from the Sadar subdivisions of the 24-Parganas and Howrah districts.
(2) European Mental Hospital, at Kanke, Ranchi, in the province of Bihar and Orissa.	All European lunatics.	Any part of the Presidency of Fort William in Bengal.
(3) Indian Mental Hospital, at Kanke, Ranchi, in the province of Bihar and Orissa.	All Indian lunatics	Ditto.

Provided that Indian lunatics who pay for their accommodation and are accustomed to the European mode of life may be sent to the European Mental Hospital at Kanke, Ranchi, subject to the following conditions:—

(a) No Indian lunatic shall be sent to the said European Mental Hospital if there are at the time ten Indian lunatics accommodated in the said hospital who have been sent to the said hospital under this proviso.

(b) If at any time Indian lunatics who have been sent to the said European Mental Hospital under this proviso are being accommodated in the said hospital and it becomes necessary to provide accommodation for European patients in the said hospital such Indian patients or such number thereof as is necessary to provide such accommodation shall be transferred to the Indian Mental Hospital, Ranchi.

(Bengal Government Notification No. 554-Medl., dated the 7th February 1938.)

NOTE 1.—The Mental Observation Ward, Bhowanipore, shall be used only for the purposes of observation.

NOTE 2.—Mental Observation Ward, Bhowanipore, having been declared an asylum within the meaning of the Indian Lunacy Act, admission of lunatics there must be regulated by the provisions of the said Act and rules thereunder. Government are advised that under provisions of sections 87-90 of the said Act it is the duty of the persons who have charge of the property of the lunatic as well as of his relations, when in a position to do so, to pay for his expenses in the Observation Ward as in an ordinary asylum. All committing authorities should, in issuing orders for reception of lunatic or alleged lunatic in the Ward, find out whether there is any person who can be charged with the cost of maintenance of the lunatic or the alleged lunatic, and if so, record an order for payment of the cost by such a person.

NOTE 3.—All committing authorities in issuing orders for reception in the Ward should see that ten days' charges for the patient are paid in advance if he is to be placed in the paying class; failing such payment a patient will be given non-paying accommodation in the Ward.

NOTE 4.—When suspected lunatics are discharged from the Observation Ward under the orders of the officers committing them, the latter shall provide them, if necessary, with the expenses for going home and shall be responsible for seeing that they are sent safe to their homes or to the charge of some one competent to look after them.

34. The Magistrate shall make a searching inquiry into the previous history of a person alleged to be a lunatic, with a view to obtain every possible information regarding him, and shall furnish a fresh and complete history of each case, especially with reference to mode of life, state of health, and cause of insanity, all particulars being entered in the descriptive roll in Form O, annexed to these rules.

39. A certificate of fitness to travel must be furnished by the Medical Officer who certifies the insanity of the patient.

40. The Magistrate who despatches a lunatic to an asylum shall make proper arrangements to ensure that the lunatic is provided with suitable food for his consumption during the journey to the Mental Hospital.

41. (1) The Magistrate shall send the following documents with every lunatic sent to a Mental Hospital:—

- (i) Reception order;
- (ii) Certificate by Medical Officer in Form 3 in Schedule I to Act IV of 1912;
- (iii) Descriptive roll in Form O, annexed to these rules;
- (iv) Certificate of fitness to travel.

(2) If any document is not received, or if any defect or omission is discovered in any one of them, it shall at once be notified to the offic., by whom the lunatic has been sent with a view to the prompt rectification of the error.

NOTE 1.—Form O referred to above is reproduced as Form No. (M) 32 in Volume 11.

NOTE 2.—The class of patients' who are to be sent to the European Mental Hospital at Ranchi is defined in the enclosure to the High Court's General Letter No. 2 (Civil and Criminal), dated the 24th January, 1920.

NOTE 3.—Before directing the despatch of a European lunatic to the European Mental Hospital at Ranchi, in Bihar and Orissa, the principle laid down in the Bengal Government Circular No. 1235-86Medl., dated the 29th April, 1921, and Circular No. 482-534Medl., dated the 26th February, 1923, also Bengal Government's memorandum Nos. 1150-1202Medl., and Nos. 1645-1697Medl., dated, respectively, the 23rd April and the 5th July, 1923, should be observed

NOTE 4.—Bengal and Assam are among the provinces authorised to send European lunatics to the Mental Hospital at Ranchi. (See Bengal Government endorsement to District Judges and District Magistrates, Nos. 2936-2987Medl., dated the 7th November, 1921.)

**NOTE 5.**—Intimation of the despatch of mental patients for admission to the Indian Mental Hospital, Kanke, with details about the date and hour of arrival at the Ranchi railway station should invariably be sent beforehand to the Superintendent of the hospital by wire, if necessary. Before despatch to Ranchi of such patients, enquiry must also always be made of the Superintendent of the hospital whether accommodation is available for them. (See Bengal Government Memorandum No. 276-Medl., dated the 31st January, 1927.)

**NOTE 6.**—Before issuing reception orders for the detention of insane persons in the Indian Mental Hospital, Kanke, the provisions laid down in the Bengal Government Circular Nos. 3222-3275 Medl., dated the 20th December, 1927, should be strictly observed.

**328.** The rules\* framed by the Government of Bengal under sub-section (1) of section 91 of the Indian Lunacy Act, 1912 (IV of 1912), for regulating the procedure to be followed by the District Courts in respect of applications made under section 62 of the said Act, are reproduced below:—

(1) Every application for inquisition made under section 63, sub-section (1) of the Indian Lunacy Act, 1912, and all notices and proceedings under the said Act shall be entitled in the manner following, namely:—

*In re* the Indian Lunacy Act, 1912, and

*In re* (name of person concerned).

(2) Every such application shall set forth the following particulars, namely:—

(a) Name, age and residence of the alleged lunatic (if a minor, name of person acting as guardian), also his position in life and domicile.

(b) Whether the alleged lunatic is married or unmarried, or a widow or widower.

(c) Names and addresses of all near relatives of, and persons interested in, the alleged lunatic.

(d) Concise description of the property of the alleged lunatic and the income thereof.

(e) A statement of the interest of the applicant in making the application.

(f) A concise statement of the facts on which the application is based, stating, where possible, the nature of the alleged lunacy and the time during which it is alleged that he has been of unsound mind.

(g) Name of persons (if any) proposed for appointment as manager of the alleged lunatic's estate and/or guardian of his person.

(3) Every such application, unless made by the Government Pleader shall be supported by an affidavit; and every such application, whether made by the Government Pleader or by any other person, shall be accompanied by the certificates of two registered medical practitioners who had reasonable opportunity of seeing and observing the alleged lunatic. Such certificates shall be to the effect that in the opinion of the writers the person in question is insane or incapable of managing himself or his affairs. Such certificates shall also state whether or not, in the opinion of the medical practitioners, service of notice of the proceedings on the alleged lunatic would be ineffectual by reason of his state of mind and whether or not it is undesirable on medical grounds that he should be required to attend for the purpose of being personally examined.

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\*Bengal Government Notification No. 3632-J., dated the 27th April, 1928.

(4) The Court, if satisfied by the affidavit and the medical certificates and by any further evidence which it may deem fit to take and by personal interview with the alleged lunatic, where such interview seems possible and desirable, that an inquisition should be held, shall record an order stating that such inquisition will be held and fixing a time and place therefor.

(5) Thereupon the Court shall issue notice to the alleged lunatic in Form No. (P)82, Volume II.

(6) When the Court is satisfied by the medical certificates filed with the application that personal service on the alleged lunatic would be ineffectual, the Court shall direct substituted service of the said notice by serving the same upon such adult person residing with the alleged lunatic as the Court may select.

(7) Notices in the like form shall be served upon such relatives of the alleged lunatic and on such other person as the Court may direct.

(8) Unless the Court be satisfied by the said medical certificates that it is undesirable on medical grounds to direct the attendance of the alleged lunatic, the Court shall, when recording the order directing inquisition, direct by the said order that the alleged lunatic do attend at such convenient time and place as it may appoint for the purpose of being personally examined, and notice of the said order shall be served upon the alleged lunatic together with notice of the inquisition either personally or by service upon such adult person residing with the alleged lunatic as the Court may select. Such notice shall be in Form No. (P)83, Volume II.

## II. The Indian Companies Act, 1913.

**329.** The rules made by the High Court, from time to time, pursuant to section 246 of the Indian Companies Act, 1913, apply to all District Courts subordinate to the High Court, empowered under sub-section (1) of section 3, to exercise all or any of the jurisdiction conferred by the Act.

**NOTE.**—The rules now in force are shown in Appendix 7 to the Rules of the Calcutta High Court (1914), Original Side, Fourth Edition.

## 12. The Indian Oaths Act, 1873 (X of 1873).

**330.** (1) The following forms of oaths and affirmations are prescribed by the High Court under section 7. Act X of 1873:—

### (1) *Oath for witnesses.*

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false. So help me God.

### (2) *Affirmation for witnesses.*

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

*(1) Oath for interpreters.*

I swear that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate and explain. So help me God.

*(2) Affirmation for interpreters.*

I solemnly declare that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate, or explain.

(2) The same forms shall be used in criminal as in civil cases.

**331.** (1) Christian witnesses, interpreters and jurors, to whom oaths are administered, are to be sworn upon the New Testament.

(2) In other cases the oaths are to be administered upon such symbol, or accompanied by such act as may be usual, or as such witness, interpreter, or juror may acknowledge to be binding on his conscience.

**13. The Land Registration Act, 1876 (Bengal Act VII of 1876).**

**332.** When an order under section 32 of Bengal Act VII of 1876, directing the transfer of proprietary possession to be registered in the Registers of the Collector of the district, is passed by any Civil Court, the presiding officer of such Court shall send a copy of his order to the Collector, with a view to such transfer being registered in the Collectorate Register.

**14. The Bengal Alluvial Lands Act, 1920 (Bengal Act V of 1920).**

**333.** The rules made by the Government of Bengal under section 8 of the Bengal Alluvial Lands Act, 1920 (Bengal Act V of 1920) are reproduced in the Appendix below:—

**Appendix.***I.—Attachment.*

(1) The attachment of alluvial land under sec. 3 of the Bengal Alluvial Lands Act, 1920 (hereinafter referred to as "the Act") shall be made by an order in the form in Appendix 1 addressed to an officer, not below the rank of a Collectorate Kanungo.

(c) Possession under the order of attachment shall be taken by erecting a long bamboo on the land in the presence of some of the chief inhabitants of the neighbouring villages including members of the Union Boards and chaukidars. The order shall also be proclaimed at some place on, or adjacent to, the property by beat of drum or other customary method; and copies of the order shall be affixed at a conspicuous part of the property and at a conspicuous place in the nearest inhabited village. A copy thereof shall also be affixed in a conspicuous part of the office of the Subdivisional Officer or Collector.

*II.—Management.*

(3) Pending a decision of the Court, under sec. 6 of the Act, the Collector shall cause to be prepared a list showing the names of all persons claiming to be in cultivating possession, disputed or otherwise, of particular lands within the attached area. If there be no dispute regarding the cultivation of any land, the person in possession shall be left undisturbed to cultivate that land and a temporary settlement made with him pending the Court's decision. If there be such a dispute, the land shall be settled temporarily in such manner as the Collector may direct.

(4) The settlements under sub-rule 3 shall be effected by the simple grant of permission to cultivate the land on condition of the payment of a certain rent, and on condition that the tenancy will terminate on the expiry of such period as may be fixed, not exceeding three years, or, if within such period the Collector cancels his order of attachment under sub-section (3) of section 3 or if, according to an order passed under section 6 of the Act by the Court, he puts any other person in possession, then on the date of such cancellation or of such possession being given.

(5) If the Collector appoints a Receiver for the attached land, the powers, duties and liabilities of such Receiver shall be the same as those of a Receiver appointed under Order 40 in the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908).

### *III.—Demarcation, Survey and Preparation of a map.*

(6) So far as practicable, the disputed area shall be clearly demarcated by permanent pillars.

(7) A survey of the boundary of the attached area, together, where necessary, with a survey of the internal detail of the area shall be made by means of a theodolite. Such survey shall, where practicable, be connected with such permanent marks as may exist in the vicinity.

(8) (i) The map prepared on the basis of such survey shall show—

(a) the boundary of the disputed land;

(b) internal boundaries where necessary;

(c) the permanent marks with which the survey was connected, where practicable;

(d) the boundaries of adjacent lands so far as may be necessary; and

(e) the position of the revenue, diara or other relevant survey lines if such position can be determined with sufficient accuracy, and such lines are relevant to the dispute.

(ii) The map so prepared shall be certified by the Collector to be a map prepared under section 4, sub-section (1) of the Act, and be signed by him.

### *IV.—General notice.*

(9) The general notice inviting claimants to the attached land under section 5, sub-section (4) of the Act, shall be proclaimed at some place on, or adjacent to, the property by beat of drum or other customary method. It shall also be served by affixing a copy of the notice at a conspicuous part of the disputed property and at a conspicuous place in the nearest inhabited village. A copy thereof shall also be affixed in some conspicuous place in the Court-house. The form of the general notice is given in Appendix II.

[NOTE.—The form of notice referred to in this rule is reproduced as Form No. (1)<sup>1</sup> 81, Volume II.]

### *V.—Procedure in making a reference to the Civil Court.*

(10) The reference to the Civil Court under section 5, sub-section (1), of the Act, shall include the following papers and statements:—

(a) the map prepared under section 4, sub-section (1) of the Act;

(b) a list of the names and places of residence of all persons claiming interest in the land, whether as proprietors, tenure-holders or raiyats;

(c) a statement of the amount of costs incurred under section 3 and section 4, sub-section (1) of the Act;

(d) a statement of the value of the land;

(e) a brief statement of the facts of the dispute so far as they are known to the Collector.

N<sup>o</sup> 21.—Fees for initial notices, necessary for getting the parties before the Court should be paid, in the first instance by the Collector, but court-fees on the reference itself, as if it were a plaint need not be paid by him.

### *VI.—Delivery of possession under section 6 of the Act.*

(11) Delivery of possession under sec. 6 of the Act shall be made by an order in the form given in Appendix III, addressed to an officer not below the rank of a Collectorate Kanungo. Possession shall not ordinarily be given until the crops sown and planted by the cultivating tenants have been gathered by them.

(12) Delivery of possession shall be made to, and a receipt taken from, the party to whom it has been adjudged, or to such person as he may appoint to receive delivery in his behalf. The order shall also be proclaimed at some place on, or adjacent to, the property by beat of drum or other customary method, and a copy of the order shall be affixed on a conspicuous part of the property:

Provided that, if there are several parties mentioned in the order, delivery of possession shall be deemed to have been made if the order is proclaimed and a copy of it is published in the above manner.

#### VII.—Profits.

(13) The profits of management during the period of attachment shall be made over to the party or his authorised agent, as adjudged by the Civil Court to be entitled to such profits.

### 15. The Court of Wards Act, 1879 (Bengal Act IX of 1879).

**334.** Officers presiding in Civil Courts should send under cover to the Collector, or Deputy Commissioner, as the case may be, for transmission to the Court of Wards, all applications addressed to such Court, under section 10, Bengal Act IX of 1879, asking it to take charge of the properties of minors.

### 16. The Calcutta Improvement Act, 1911 (Bengal Act V of 1911).

**335.** Attention is invited to the provisions of section 82 of the Calcutta Improvement Act, 1911, imposing an additional stamp duty on certain instruments affecting immovable properties situated in the Calcutta Municipality, and to the Rules of the Government of Bengal under section 86 of the Act, published in the *Calcutta Gazette* of the 27th December, 1911, Part IB, page 250.

### 17. The Indian Divorce Act, 1869 (IV of 1869).

#### I.—High Court Order under section 17.

**336.** The following Order has been made by the High Court under section 17 of the Indian Divorce Act, IV of 1869:—

The time within which a decree of a District Judge may not, under section 17 of the Act be confirmed shall be six months from the pronouncing thereof.

**NOTE.**—The reference for confirmation should be made and the record of the divorce case should be sent by the District Judge to the High Court as soon as possible after the decree *nisi* is pronounced.

#### II.—Rules under section 17-A.

**337.** The rules framed by the appropriate authority in exercise of the powers conferred by section 17-A of the Act are reproduced below:—

(1) These rules may be called the Indian Divorce (Domiciled Parties) Intervention Proceeding Rules, 1928.

(2) In these rules, unless there is anything repugnant in the subject or context—

“Act” means the Indian Divorce Act (IV of 1869);

“Officer” means an officer appointed under section 17-A of the Act to exercise the like right of showing cause that a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King’s Proctor;

“Pleader” means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court; and “proceeding” means a suit or proceeding under the Act.



(3) (i) If any person during the progress of a proceeding or before the decree *nisi* is made absolute gives information to the officer on any matter material to the due decision of the case, the officer may take such steps as he considers necessary or expedient.

(ii) If, in consequence of any such information or otherwise, the officer suspects that any parties to the petition are or have been in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the Court, intervene and produce evidence to prove the alleged collusion.

(4) (i) When the officer desires to show cause against making absolute a decree *nisi*, he shall enter appearance in the proceeding in which such decree *nisi* has been pronounced and shall, within a time to be fixed by the Court, file his plea setting forth the ground upon which he desires to show cause, as aforesaid, and a certified copy of his plea shall be served upon the petitioner or person in whose favour such decree has been pronounced or his pleader. On entering an appearance the officer shall be made a party to the proceedings and shall be entitled to appear in person by pleader.

(ii) Where such plea alleges the petitioner's adultery with any named person, a certified copy of the plea shall be served upon each such person omitting such part thereof as contains an allegation in which the person so served is not named.

(iii) All subsequent pleadings and proceedings in respect of such plea shall be filed and carried on in the same manner as in respect of an original petition under the Act, except as hereinafter provided.

(iv) If the charges contained in the plea of the officer are not denied or if no answer to the plea of the officer is filed within the time allowed or if an answer is filed and withdrawn or not proceeded with, the officer may apply forthwith for the rescission of the decree *nisi* and dismissal of the petition.

(5) Where the officer intervenes and shows cause against a decree *nisi* in any proceedings for divorce, the Court may make such order as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of the said parties by reason of his so doing as may seem just.

### 118. (1) The Bengal Money-lenders Act, 1933 (Ben. Act VII of 1933).

338. The following rules\* made under section 10 of the Bengal Money-lenders Act, 1933 (Ben. Act VII of 1933) are reproduced for information (Government of Bengal Notification No. 28J, dated the 10th January, 1934):—

(1) The demand under sub-section (1) of section 7 for particulars concerning any loan or loans shall be made by a debtor to a money-lender in Form I annexed to these rules.

(2) On demand being made in the form prescribed in rule 1, the money-lender shall supply to the debtor the particulars concerning the loan or loans which are mentioned in Form II annexed to these rules.

(3) The application under sub-section (1) of section 9 for permission to deposit in the Court any sum of money due from a debtor to the money-lender in respect of any loan or loans shall be in writing and shall contain the following particulars:—

(a) the name and full address of the money-lender in whose favour the deposit is made;

\*The forms Nos. I, II, III, IV and V prescribed in the rules are respectively reproduced as Parts I and II of Form No. (M) 56, and Forms Nos. (P) 85, (M) 57 and (A) 3 in Volume II.

- (b) a recital that the debtor has sent the money by postal money-order to the money-lender and that the money-lender has refused to accept the same. (The amounts sent on account of principal and interest should be mentioned separately together with the date of the remittance of the same.)

The application shall be signed and verified in the manner provided in sub-rules (2) and (3), of r. 15 of Or. 6 in Schedule I to the Code of Civil Procedure, 1908, by the debtor, or by his authorised agent.

(4) The application shall bear a court-fee stamp of twelve annas as required by Article 1(b) of Schedule II of the Court-fees Act, 1870, and shall further be accompanied by printed forms of notice in Form III annexed to these rules for service on the money-lender with process-fees payable in court-fee stamps according to the scale prescribed by the High Court for service of summons on defendants. The blank spaces in Form III shall be filled in by the debtor or by his authorised agent.

(5) If it appears to the Court, to which an application for permission to deposit under section 9 is made, that the applicant is entitled under that section to deposit the money, it shall receive the same and give a receipt in Form IV annexed to these rules.

(6) The money-lender may apply for withdrawal of the money in Form V annexed to these rules, and the procedure in connection with such withdrawal shall be the same as in the case of withdrawal of other civil deposits.

## **(2) The Bengal Money-Lenders Act, 1940 (Bengal Act X of 1940).**

**339.** The rules made under section 44 of the Bengal Money-Lenders Act, 1940 (Bengal Act X of 1940), are reproduced below (Government of Bengal Notification No. 4054J., dated the 10th December, 1940).—

### **THE BENGAL MONEY-LENDERS RULES, 1940.**

1. These rules may be called the Bengal Money-Lenders Rules, 1940.
2. In these rules, unless there is anything repugnant in the subject or context,—

- (1) “form” means a form appended to these rules;
- (2) “section” means a section of the Act;
- (3) “the Act” means the Bengal Money-Lenders Act, 1940.

3. The Provincial Registrar shall exercise general supervision and control over Registrars and Sub-Registrars and Registrars shall exercise general supervision and control over Sub-Registrars. Registrars are authorised under section 6 to hear appeals under sections 16 and 17 from the orders of Sub-Registrars functioning within their respective jurisdictions.

4. An application for appeal under section 5 shall bear a court-fee stamp of Re. 1.

5. A register of money-lenders referred to in section 7 shall be maintained in Form I by Sub-Registrars. Every Registrar shall maintain one such register and the Provincial Registrar shall maintain as many such registers as may be necessary to show in a consolidated manner the names of the registered money-lenders within their respective jurisdictions.

6. Every application for licence under section 11 shall be made in form II.

7. (1) An application for licence on behalf of a firm shall be signed by all the persons constituting the firm or their representative or representatives duly empowered, or in the case where any such person is a minor by the person representing him in the business.

(2) Every such application shall also be verified, in the manner provided in the Code of Civil Procedure, 1908, for the verification of pleadings, by one of the persons signing the application.

8. Every application for license shall be presented by the applicant personally or by an agent authorised in this behalf in writing by the applicant:

Provided that where there are more applicants than one for the licence any one of them may present the application.

9. Every application for a licence shall be accompanied by an affidavit stating whether any Court has, at any time, made any order in relation to the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business, in regard to any of the matters mentioned in section 14.

10. (1) After making such enquiries as he thinks necessary the Sub-Registrar shall, if he finds that there is no reason to refuse the grant of the licence, direct the applicant to pay within a specified time a sum representing the fee specified in section 10 in court-fee stamps. These shall be affixed to the application and shall be duly punched and cancelled by the Sub-Registrar who shall put his initials and the date across each court-fee label.

(2) A record signed by the Sub-Registrar shall be kept of every enquiry referred to in sub-rule (1) and such record shall contain a brief memorandum of the substance of evidence taken, if any, and a summary of any conclusion regarding facts elicited during the enquiry.

11. After the applicant has paid in accordance with rule 10 the fee referred to in section 10 the Sub-Registrar shall grant him a licence in form III.

Necessary entries shall then be made in the register maintained in the office of the Sub-Registrar. Two copies of such entries shall be sent twice every month to the Registrar having jurisdiction for record in the register kept in his office under rule 5. The Registrar in his turn shall send one such copy to the Provincial Registrar for incorporation in the register kept in the office of the Provincial Registrar.

A money-lender to whom a licence has been issued may, during the validity of such licence, secure as many duplicates of such licence as he may require from the Sub-Registrar who issued the original licence on payment of a fee of Rs. 2 only in court-fee stamps for each such duplicate.

A money-lender holding a licence may apply for renewal of his licence before the date on which it is due to expire.

12. When a Court requires the money-lender under sub-section (2) of section 13 to pay any penalty imposed by it under that sub-section, it shall direct the money-lender to deposit in the Government treasury a sum representing the said penalty and to file the treasury chalan of such deposit within a time to be fixed by it.

In stations where there are no treasuries the deposit ordered under this rule may be accepted by the Court as a Government receipt and disposed of in accordance with the rules applicable to Government receipts in Civil Courts.

13. An application for removing a disqualification referred to in sub-section (1) of section 14 shall be made in form IV to the Secretary to the Government of Bengal in the Judicial Department. A fee of Rs. 50 shall be deposited in the Government treasury and the receipt (chalan) thereof shall be forwarded with the application:

Provided that the Provincial Government may in any special case on previous application of the party remit any part of such fee, but the fee shall in no case be less than Rs. 15.

14. (1) Every appeal under sub-section (3) of section 16 against an order of a Sub-Registrar refusing a licence and every application under sub-section (5) of that section for revision of any decision of a Registrar shall be preferred in the form of a memorandum stamped as required under article 1(b) of Schedule II to the Court Fees Act, 1870 (VII of 1870), and shall respectively be accompanied by an attested copy of the order appealed against and of the decision for the revision of which the application has been made.

(2) As soon as any appeal is filed the Registrar shall cause notice of the same to be given to the Sub-Registrar against whose order the appeal is made, and shall call for the records of the case.

(3) An appeal shall not stay the operation of the order appealed against except so far as the Registrar may direct.

(4) When a memorandum of appeal is filed it shall be entered in a book to be kept for the purpose to be called "Register of Appeals".

(5) The Registrar shall fix a day for hearing the appellant or his pleader and hearing him if he appears on that day, the Registrar shall give his decision. The Registrar may also give his decision if the appellant or his pleader does not appear on the day fixed. The decision may be for confirming, varying or reversing the order against which the appeal is preferred.

(6) The procedure laid down in sub-rules (2), (3), (4) and (5) shall apply *mutatis mutandis* to the hearing of applications for revision under sub-section (5) of section 16.

(7) A record shall be kept of the hearing of every appeal by a Registrar in the form of an ordinary Revenue miscellaneous case, while the record of the hearing of an application for revision by a competent Court shall be kept in the manner provided in the High Court Civil Rules and Orders for the keeping of records in the case of miscellaneous appeals and miscellaneous cases in the Civil Courts.

(8) The provisions of this rule shall apply to appeals and revisions contemplated in section 17.

15. (1) Every order of cancellation of licence passed under section 17, and the substance of every order passed under sub-section (1), sub-section (3) or sub-section (4) of section 20 shall be entered by the Sub-Registrar in the register in which the licence affected has been entered, and intimation of all such orders shall be also given by the Sub-Registrar through the Registrar having jurisdiction to the Provincial Registrar as early as possible.

(2) The Provincial Registrar shall take steps to circulate the substance of any order passed under sub-section (1), or sub-section (3), or sub-section (4) of section 20 to other Registrars as soon as he receives it from the Court which passed the order, and shall also cause the same to be published in such local newspaper or newspapers as may be selected by him. The Provincial Registrar may also in particular cases publish the substance of such order in the *Calcutta Gazette*.

16. Every application under section 11 or section 19 shall bear a court-fee stamp as laid down in article 1(b) in Schedule II to the Court Fees Act, 1870 (VII of 1870).

17. Every application for cancellation of licence under section 19 shall be in form V, and shall be signed and verified in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.

18. The substance of the order referred to in sub-section (5) of section 20 shall be embodied in form VI, form VII or form VIII, as the case may be. It shall be sent to the Provincial Registrar and the Sub-Registrar concerned as laid down in the said sub-section. The Provincial Registrar shall take necessary steps to circulate the substance of such orders periodically to all Registrars of the Province.

19. (1) The cash book, the ledger and the receipt book referred to in sub-section (1) of section 24 shall be maintained by the money-lender in forms IX, X and XI, respectively. He may, however, add additional items to the forms for his convenience.

(2) The statement showing details of the conditions of the loan and other information connected therewith under clause (a) of sub-section (2) of section 24 shall be delivered by a money-lender to a borrower in form XII.

20. A copy of the account referred in sub-section (1) of section 24 shall be admissible as evidence of the contents of such account if it is certified to be a true copy of such account, under the signature of the money-lender or his authorised agent, the signature being attested by the President or any other member of a union board, or a Magistrate, Honorary or Stipendiary, or any gazetted officer of Government.

21. The statement of accounts which the money-lender shall, within two months of the commencement of each year, furnish each of his borrowers under sub-section (1) of section 25 or the statement to be supplied by the money-lender to his borrower under sub-section (2) of that section shall be in form XIII.

22. A borrower shall pay to the money-lender under the proviso to sub-section (3) of section 25 a fee of Rs. 2 in order to obtain a subsequent copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower, a copy of which has previously been furnished to him by the money-lender under the said sub-section. The fee shall be sent by postal money order and the number and date of the postal receipt shall be mentioned in the demand in writing made by the borrower.

23. The state of information to be supplied to an assignee under clause (b) of sub-section (1) of section 28 shall be in form XIV.

24. (1) The notice to be given to the defendant by the plaintiff under sub-clause (ii) of clause (a) of sub-section (1) of section 34 shall be in form XV.

(2) The notice to be given by the decree-holder to the judgment-debtor under sub-section (2) of section 34 shall be in form XVI.

25. An application for review of decree made under sub-clause (ii) of clause (a) of sub-section (6) of section 36 shall bear a court-fee stamp as laid down in article 11 (a)(ii) of Schedule II of the Court Fees Act, 1870 (VII of 1870).

26. The application to be made by a borrower under sub-section (1) of section 38 shall be made in form XVII.

For the service of notice of such application on the lender under the said sub-section process fees shall be payable by the borrower in court-fee stamps according to the scale laid down by the High Court for service of summons on defendants, and no notice shall be issued unless such process fees have been paid (Appendix A).

27. (1) The application to be made by the borrower to a Court for permission to deposit a sum under sub-section (1) of section 39 shall be made in form XVIII and shall bear a court-fee stamp of 12 annas as required by article 1(b) of Schedule II to the Court Fees Act, 1870 (VII of 1870).

(2) The Court shall thereupon cause notice of the deposit to be served on the lender under sub-section (2) of section 39 in form XIX for which process fees in accordance with the scale laid down by the High Court for service of summons on defendants shall be charged (Appendix A).

(3) The lender may present a petition for the withdrawal of the sum in form XX and the procedure to be followed in connection with such withdrawal shall be the same as in the case of withdrawal of other civil deposits. Every such petition shall be accompanied by a verified statement on plain paper as required under sub-section (2) of section 39, and shall, except in cases in which the original deposit does not exceed Rs. 25 in amount, be stamped with court-fees chargeable under the fourth paragraph of clause (a) or the second paragraph of clause (b) of article 1 of Schedule II to the Court Fees Act, 1870 (VII of 1870), as the case may be.

28. The Provincial Government may provide such ministerial and menial staff as in its opinion may be required from time to time by the Provincial Registrar and any Registrar and Sub-Registrar, and may regulate the conditions of employment of such staff and fix the salaries and allowances payable to them.

29. Every Sub-Registrar and Registrar shall keep an Inspection Book.

30. Every Sub-Registrar and Registrar shall at all times permit any officer authorised in this behalf by the Provincial Government to have access to all his books, proceedings and records.

31. Every Sub-Registrar shall maintain a register of applications for licence and for cancellation of licence in form XXI.

32. A Register of Fees and a Register of Miscellaneous Applications shall be maintained by every Sub-Registrar and Registrar in forms XXII and XXIII.

NOTE.—The forms Nos. VI, VII, VIII, XIX and XX prescribed in the rules are included in Volume II as Nos. (J)64, (J)65, (J)66, (P)85 and (A)3, respectively. With regard to other forms and Appendix, see "Bengal Money-Lenders Rules, 1940."

### 19. The Arbitration Act, 1940 (X of 1940).

340. (1) The following rules shall be cited as the Arbitration Rules. All references therein to "Act" shall be read as meaning the Arbitration Act, 1940.

(2) The forms prescribed by these rules shall be used for the purposes to which they severally relate with such variations as the circumstances of each case may require. Forms Nos. I, II and III referred to in the rules have been appended thereto, while Forms Nos. (J) 20, (J) 21 and (P) 9 will be found in Volume II, Civil Rules and Orders.

Insert the following as a new rule after the rule:—

"20. The Special Marriage Act, 1954 (Act XLIII of 1954)."

200A. (1) These rules may be called the Special Marriage Act (Calcutta High Court) Rules, 1955.

(2) In these rules, unless there is anything repugnant in the subject or context,—

- (i) the "Act" means the Special Marriage Act, 1954 (XLIII of 1954). as from time to time modified or amended; and
- (ii) the "Court" means the Judge sitting in Court.

— the wife petitioner has ordinarily resided during the three years immediately preceding the presentation of the petition, and the length of her residence at each address, and the place of residence of the husband;

- (iii) whether there is any living issue or issues of the marriage, and, if so, the name, the date of birth or age of such child or each of such children, and also that the parentage of any living child or children of the wife born during the marriage is in dispute, if such be the case;
- (iv) whether there have been in any Court any, and, if so, what previous proceedings with reference to the marriage, by or on behalf of either of the parties to the marriage, and the result of such proceedings;
- (v) the matrimonial offences alleged or other grounds, upon which relief is sought, setting out with sufficient particularity the times and places of the acts alleged, and other facts relied upon, but not the evidence by which they are intended to be proved;
- (vi) that there is no collusion between the petitioner and the other party to the marriage.

(4) Every petition for divorce or judicial separation, as the case may be, shall state—

- (i) if the petition is on ground (h) of section 27 of the Act, the date and the place where the respondent was last seen or heard of, and the steps which have been taken to trace the respondent;
- (ii) if the petition is on ground (i) of section 27 of the Act, the last place of cohabitation of the parties, and the circumstances in which they ceased to cohabit;
- (iii) where the ground of the petition is adultery, that the petitioner has not in any manner been accessory to or connived at or condoned the adultery;
- (iv) where the ground of the petition is cruelty, that the petitioner has not in any manner condoned the cruelty;
- (v) where the petition is on the ground of mutual consent, the date and the place where the parties last lived together, the addresses where each party has since lived, with the period of residence at each address, the reasons why the parties have not been able to live together, the date when the mutual agreement was arrived at, and whether such agreement is verbal or evidenced by a document in writing.

## PART III—Records

### CHAPTER 16

#### THE CLASSIFICATION OF RECORDS OF JUDICIAL PROCEEDINGS.\*

**341.** The records of judicial proceedings, whether suits or cases, are divided into seven classes. The classification relates only to the preparation and the preservation or destruction of the record, and does not affect any other classification of suits or cases for the purpose of returns or statements.

**342.** *Class I* includes records of—

(a) Suits for or affecting immovable property other than suits under Or. 34, C. P. Code, 1908, for foreclosure, redemption or sale.

NOTE—Suits under sec. 9 of the Specific Relief Act, 1877, should be included, not in this class, but in class III.

(b) Suits for enforcing the right of pre-emption under the Muhammadan Law.

(c) Suits in respect of the succession to an office, or to establish or set aside an adoption, or otherwise determine the status of an individual.

(d) Suits relating to public trusts, charities, endowments, public or ~~public or general interest.~~

**Page 117, Rule 342—**

*Insert the following items as clauses (g) and (h) after the Note to clause (f) of the rule—*

“(g) Proceedings under section 6(5) of the Hindu Marriage Act, 1955, where permanent injunction is granted, proceedings under sections 9, 10(1) and (2), 11, 12(1) and 13(1) and (2) of the Act, and proceedings under the proviso to section 14(1) of the Act, where a decree is pronounced.

(h) Proceedings under sections 22, 23(1) and (2), 24, 25, 27 and 28(1) and (2) of the Special Marriage Act, 1954, and Proceedings under the proviso to section 29(1) of the Act, where a decree is pronounced.”

No. 6, dated the 15th June, 1958, Circular Order No. 6 (Civil) of 1956.]

(c) Cases under ~~section 95 of the Act~~ relating to the determination of the incidents of a tenancy and cases under section 95 of the Act relating to the appointment of common managers.

(d) Contested and uncontested suits and cases for probate and letters of administration, and for the revocation of the same.

NOTE 1.—The papers which the District Delegate, acting under section 286 of the Indian Succession Act, 1925, forwards to the District Judge, should be included in this class (*cf.* Note to rule 301.)

NOTE 2.—The custody and preservation of a will itself is provided for by rule 302 *et seq.* A will which has been proved does not form part of the record within the meaning of this rule.

\*The rules specially applicable to records of Small Cause Courts will be found in Chapter 21, p. 153.



NOTE 3.—Orders in an enquiry made at the instance of the Collector under clause 5 of section 19-H of the Court-fees Act VII of 1870, should be written on the order-sheet of the original case to which they relate; and the papers of the proceedings will form part of the records of the original case.

(e) Cases under the Guardians and Wards Act, 1890, relating to the guardianship of minors and the administration of their property.

(f) Cases under the Indian Lunacy Act, 1912, relating to the guardianship of lunatics and the care of their estates.

NOTE.—An application by an executor or administrator or by the guardian of a minor or lunatic to sell, mortgage or otherwise dispose of property belonging to the estate, together with all the proceedings connected with it, shall be kept with the record of the case.

(g) Cases for succession certificate under the Indian Succession Act, 1925.

(h) Suits under Order 34, C. P. C., for foreclosure, redemption, or sale.

(i) Cases under sections 10 and 24 of the West Bengal Non-Agricultural  
Act 1949.

### Page 118, Rule 343—

*Insert* the following as clause (k) *after* clause (j) of the rule—

“(k) Cases under sections 87(6), 88(1) and 88(2) of the Insurance Act, 1938.”

[No. 7 dated the 15th June, 1958, Circular Order No. 3 (Civil) of 1956.]

NOTE.—If no claimant appears the record should be regarded as miscellaneous non-judicial case for purpose of destruction.

(b) Suits for the recovery of arrears of maintenance.

(c) Suits for specific performance of an agreement to transfer immovable property or for cancellation of the deed of transfer of immovable property.

(d) (i) Cases under Part VII of the Indian Succession Act, 1925.

(ii) Cases under the Land Acquisition Act, 1894, Parts III, IV, section 32 of Part V, and Part VI.

(iii) Cases under the Land Registration Act, 1876, section 59.

(iv) Cases under section 83 of the Transfer of Property Act.

(v) Cases under the Legal Practitioners Act, 1879.

(vi) Cases under the B. T. Act, 1885, or the Cooch Behar Tenancy Act, 1910, except those specified in rule 343 above, and such miscellaneous judicial cases as are connected with suits or cases under those Acts, which should be classed according to the nature of such suits or cases.

(vii) Cases under the Provincial Insolvency Act, 1920.

(viii) Cases under the Bengal Wills and Intestacy Regulation, 1799, section 7, regarding the property of intestates, in which a claimant appears.

NOTE.—If no claimant appears the record should be regarded as miscellaneous non-judicial case for purpose of destruction.

(e) Applications to sue or appeal *in forma pauperis*, if rejected.

(f) Applications for withdrawal of suits under sections 74 and 75 of the  
No. 8.

### Page 118, Rule 344(1)—

*Insert* the following items as clauses (i) and (j) *after* clause (h) of the

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it to

(2) *Class III-A* includes records of—

(a) Suits for arrears of rent under the B. T. Act or the Cooch Behar Tenancy Act,

page 119, Rule 344(2)— *also last paragraph*) of the B. T. Act. or section

Insert the following *after* clause (b) of the rule:—

appeal,  
form

“(c) Cases under section 12(1) of the Indian Oilseeds Committee Act, 1946.”

No. 9 dated the 15th June. 1958, Circular Order No. 3 (Civil) of 1956.] I, II and III.

(2) *Class IV-A* includes—

Proceedings in execution of decrees in suits belonging to *Class III-A*.

NOTE 1.—Under the law, all such proceedings are proceedings in the suit and they must be entitled as such; but for the purpose of the arrangement and ultimate disposal of the record, each application for execution shall be treated as a separate case, the record of which shall include the papers on all matters connected with the execution from the date on which the application was presented until it is finally disposed of.

NOTE 2.—Proceedings by which decrees are sent or transferred for execution are included under this general heading. In this connection *see* rule 783.

NOTE 3.—Orders under section 169 and section 148-A (8) of the B. T. Act or sections 54 and 40A (7) of the Cooch Behar Tenancy Act should be written on the order-sheet of the case on which the proceedings arise and the papers relating thereto should form part of the record of the case.

(3) *Class V* includes records of Miscellaneous Non-Judicial cases.

**346.** Records of suits of the Small Cause Court class tried under the Small Cause Court Procedure by judicial officers empowered under section 25, Act XII of 1887, shall be disposed of in accordance with the rules hereinafter provided for the records of Courts of Small Causes (Chapter 21).

**347.** A separate record having its own order-sheet and containing appropriate papers or extracts from the original record should be started in proceedings under the Criminal Procedure Code arising out of a suit, appeal or execution case. A reference to the initiation and termination of the proceedings will be made in the order-sheet of the original suit, appeal or case and the record of the proceedings will be kept in the record-room with that of the original suit, appeal or case, annexed to that file thereof which under the rules is to be preserved for the shortest period.

NOTE 3.—Orders in an enquiry made at the instance of the Collector under clause 5 of section 19-H of the Court-fees Act VII of 1870, should be written on the order-sheet of the original case to which they relate; and the papers of the proceedings will form part of the records of the original case.

(e) Cases under the Guardians and Wards Act, 1890, relating to the guardianship of minors and the administration of their property.

(f) Cases under the Indian Lunacy Act, 1912, relating to the guardianship of lunatics and the care of their estates.

NOTE.—An application by an executor or administrator or by the guardian of a minor or lunatic to sell, mortgage or otherwise dispose of property belonging to the estate, together with all the proceedings connected with it, shall be kept with the record of the case.

(g) Cases for succession certificate under the Indian Succession Act, 1925.

(h) Suits under Order 34, C. P. C., for foreclosure, redemption, or sale.

(i) Cases under sections 10 and 24 of the West Bengal Non-Agricultural Land Revenue Act, 1949.

### Page 118, Rule 343—

Insert the following as clause (k) after clause (j) of the rule—

“(k) Cases under sections 87(6), 88(1) and 88(2) of the Insurance Act, 1938.”

[No. 7 dated the 15th June, 1958, Circular Order No. 3 (Civil) of 1956.]

NOTE.—Cases referred to in Note 2 to rule 369 *post* shall be included in this class. (Contra Note 2 to rule 458 *post*.)

(b) Suits for the recovery of arrears of maintenance.

(c) Suits for specific performance of an agreement to transfer immovable property or for cancellation of the deed of transfer of immovable property.

(d) (i) Cases under Part VII of the Indian Succession Act, 1925.

(ii) Cases under the Land Acquisition Act, 1894, Parts III, IV, section 32 of Part V, and Part VI.

(iii) Cases under the Land Registration Act, 1876, section 59.

(iv) Cases under section 83 of the Transfer of Property Act.

(v) Cases under the Legal Practitioners Act, 1879.

(vi) Cases under the B. T. Act, 1885, or the Cooch Behar Tenancy Act, 1910, except those specified in rule 343 above, and such miscellaneous judicial cases as are connected with suits or cases under those Acts, which should be classed according to the nature of such suits or cases.

(vii) Cases under the Provincial Insolvency Act, 1920.

(viii) Cases under the Bengal Wills and Intestacy Regulation, 1799, section 7, regarding the property of intestates, in which a claimant appears.

NOTE.—If no claimant appears the record should be regarded as miscellaneous non-judicial case for purpose of destruction.

(e) Applications to sue or appeal in *forma pauperis*, if rejected.

(f) Applications for withdrawal of suits under sections 74 and 75 of the

No. 8.

### Page 118, Rule 344(1)—

Insert the following items as clauses (i) and (j) after clause (h) of the rule—

“(i) Proceedings under the proviso to section 29(1) of the Special Marriage Act, 1954, where petitions under the aforesaid proviso are dismissed.

1863  
342

it to

(2) *Class III-A* includes records of—

(a) Suits for arrears of rent under the B. T. Act or the Cooch Behar Tenancy Act.

**Page 119, Rule 344(2)—** 153 (last paragraph) of the B. T. Act. or section

*Insert the following after clause (b) of the rule:—*

appeal,  
form

“(c) Cases under section 12(1) of the Indian Oilseeds Committee Act, 1946.”

**No. 9 dated the 15th June, 1958, Circular Order No. 3 (Civil) of 1956.] I, II and III.**

(2) *Class IV-A* includes—

Proceedings in execution of decrees in suits belonging to *Class III-A*.

**NOTE 1.**—Under the law, all such proceedings are proceedings in the suit and they must be entitled as such; but for the purpose of the arrangement and ultimate disposal of the record, each application for execution shall be treated as a separate case, the record of which shall include the papers on all matters connected with the execution from the date on which the application was presented until it is finally disposed of.

**NOTE 2.**—Proceedings by which decrees are sent or transferred for execution are included under this general heading. In this connection see rule 783.

**NOTE 3.**—Orders under section 169 and section 148-A (8) of the B. T. Act or sections 54 and 40A (7) of the Cooch Behar Tenancy Act should be written on the order-sheet of the case on which the proceedings arise and the papers relating thereto should form part of the record of the case.

(3) *Class V* includes records of Miscellaneous Non-Judicial cases.

**346.** Records of suits of the Small Cause Court class tried under the Small Cause Court Procedure by judicial officers empowered under section 25, Act XII of 1887, shall be disposed of in accordance with the rules hereinafter provided for the records of Courts of Small Causes (Chapter 21).

**347.** A separate record having its own order-sheet and containing appropriate papers or extracts from the original record should be started in proceedings under the Criminal Procedure Code arising out of a suit, appeal or execution case. A reference to the initiation and termination of the proceedings will be made in the order-sheet of the original suit, appeal or case and the record of the proceedings will be kept in the record-room with that of the original suit, appeal or case, annexed to that file thereof which under the rules is to be preserved for the shortest period.

**APPENDIX**

**Form No. I.**

**SPECIAL CASE.**

*[Section 13(b) of the Arbitration Act, 1940.]*

DISTRICT.....

**In the Court of .....** **at.....**

Suit/Case No. .... of 19 ..

In the matter of an Arbitration Agreement dated the ..... day of

Between

A.B. (name, description and place of residence) or Plaintiff(s)

And

C.D. (name, description and place of residence) or Defendant(s).

The following special case is stated for the opinion of the Court:—

(state the facts concisely in numbered paragraphs)

The questions of law for the opinion of the Court are:—

First, whether.....

.....

Secondly, whether.....

.....

X

Y.

Dated the ..... day of ..... 19 ..

*Arbitrator(s)/Umpire.*

**Form No. II.**

*Application for an order of Reference under Section 21 of the Arbitration Act, 1940.*

DISTRICT.....

**In the Court of ..... at .....**

Suit No \_\_\_\_\_ of 19 \_\_\_\_

***Plaintiff(s)***

**VERSUS**

***Defendant(s).***

**The petition of the above-named plaintiff s and defendant/s sheweth :--**

1. This suit is instituted for (state nature of claim).
2. The matters in difference between the parties are (state matters of difference).
3. The petitioners being all the parties interested have on the.....day of.....19.....agreed that the matters in difference between them shall be referred to the arbitration of (name, description and place of residence of the arbitrator or the manner as to the appointment of arbitrator agreed upon between the parties).
4. The petitioners therefore pray for an order of reference.

*Signature of petitioners.*

**Dated** .....

**Form No. 111.**

### AWARD.

(Preamble as in Form No. 1.)

Whereas in pursuance of an \_\_\_\_\_ agreement in writing, dated \_\_\_\_\_ the  
order of reference made herein on \_\_\_\_\_  
and made \_\_\_\_\_  
day of 19 \_\_\_\_\_, \_\_\_\_\_ between the abovenamed  
the following matters in difference  
the said A. B. and C. D. have referred to me/us, the matters  
A. B. and C. D., \_\_\_\_\_

namely, .  
in difference between them concerning:—  
 (state matters in difference)/have been referred to me/us for determination.

Now I/we having duly considered the matters submitted to me/us do hereby make my/our award as follows:—

I/we award—

- (1) that  
(2) that

(Signed)  
*Arbitrator(s) / Umpire.*

Dated the            day of            19 .

## CHAPTER 17

### THE ARRANGEMENT AND PREPARATION OF RECORDS DURING THE TRIAL.

Page 122, Rule 348—

Insert the following as Note to the rule—

"Note.—The record of proceedings under section 6(5) of the Hindu Marriage Act, 1955, where permanent injunction is granted, shall consist of a single File A." <sup>to be</sup> D.

[No. 10, dated the 15th June, 1958, Circular Order No. 6 (Civil) of 1956.]

(c) The plaint or application, together with any schedule annexed thereto.

(d) The written statement of the defendant or the counter-petition.

(e) Memorandum of the issues.

(f) Judgement upon which preliminary decree (if any) is founded and such decree, with the further directions (if any) given.

(g) Final order or judgment and the final decree.

(h) Award of arbitrators, petition of compromise, report of guardian *ad litem* (if any) that suit would not be contested, Commissioner's return or report, map, field book (in matters relating to immovable property) referred to and given effect to in the decree, but not any portion of the evidence taken by such Commissioner.

(i) Copy of the judgment and decree of the appellate Court or Courts (if any).

NOTE.—Registered address under Or. 6, r. 14-A, should not be kept in this file.

**350.** File C1. shall contain—

(a) Table of contents.

(b) All the evidence, oral and documentary, upon which the subject-matter of the suit is decided.

(c) Lists of documents admitted in evidence.

**351.** File C2 shall contain—

(a) Table of contents.

(b) All petitions and papers, including those relating to proceedings incidental to the suit, not specified as included in any other file, and in cases where any defendant is proceeded against *ex parte*, only the last summons on the basis of which due service was declared and *ex parte* decree was passed against him and the return and the order thereon with the identifier's affidavit, if any.

NOTE.—The last summons, etc., referred to are to be transferred to C, File from D File after a suit is disposed of.

**352.** File D shall contain—

(a) Table of contents.

(b) All summonses, processes, returns thereto, other than the last summonses on the absent defendants and return, etc., referred to in

clause (b) of the last preceding rule, list of witnesses, petitions relating to the attendance of witnesses or adjournments, petitions for extension of time by Commissioners and guardians *ad litem*, *rubakaris* calling for or sending papers or records and affidavits relating to matters mentioned in this rule and in rules 349 to 351.

**353.** Every record under Class II shall consist of two files to be styled and marked respectively File B and File C2.

(a) *File B* shall contain the papers specified and included in Files A and C1 of Class I.

(b) *File C2* shall contain all other papers.

NOTE 1.—The record of a case under the Guardians and Wards Act, 1890, or under the Indian Lunacy Act, 1912, or under section 95 of the Bengal Tenancy Act, shall not be divided into two files B and C2, but shall consist of a single file B. In cases where letters of administration are granted with a copy of the will annexed or the Court requires security from an executor, the bonds shall be ordered to be retained permanently with a fly-leaf containing the number and description of the case.

NOTE 2.—The papers of the proceedings of an inquiry made at the instance of the Collector under clause 5 of sec. 19H of the Court-fees Act, 1870, should be kept in File C<sub>2</sub>.

**354.** (1) Every record under Class III shall consist of two files, to be styled and marked respectively File C and File D.

(a) *File C* shall contain the documents on which the claim for relief is based, and all papers specified and included in File A, Class I, and in cases where any defendant is proceeded against *ex parte*, only the last summons on the basis of which due service was declared and *ex parte* decree was passed against him and the return and the order thereon with the identifier's affidavit, if any.

NOTE.—See the note to rule 351 above.

(b) *File D* shall contain all other papers.

NOTE.—The record of a case under section 32 of the Land Acquisition Act (I of 1894), shall consist of a single file, to be marked C, when the Judge finds that the person to whom the land belonged had no power to alienate it or to be marked D when the Judge finds that it belongs to a person who had the power to alienate it. The period of preservation of such file C or file D, as the case may be, shall be determined according to Note 3 below Rule 458, *post*.

(2) Every record under Class III-A shall consist of two files to be styled and marked E and D.

(a) *File E* shall contain the documents on which the claim for relief is based, and all papers specified and included in File A, Class I, and in cases where any defendant is proceeded against *ex parte* only the last summons on the basis of which due service was declared and *ex parte* decree was passed and the return and the order thereon with the identifier's affidavit, if any.

NOTE.—See the note to rule 351 above.

(b) *File D* shall contain all other papers.

**355.** (1) Every record under Classes IV and IV-A shall, except as provided in sub-rule (2) consist of one file which shall contain all the papers relating to the case. It shall be styled and marked File E where the decree under execution has been passed in a suit belonging to Class III-A and File C in all other cases.

(2) If the proceedings comprised in a Class IV record arose out of an application to execute a decree in a suit included in Class I, and a question is determined as to the construction of the decree, or its effect



as regards all or any of the parties thereto, or if possession is given of immovable property in pursuance of the decree, the record shall be divided into two files, to be styled and marked, respectively, File B and File C.

- (a) Table of contents.
- (a) Table of contents.
- (b) The order-sheet.
- (c) The application for execution.

When a question as to the construction, effect, or scope of the decree is raised and determined—

- (d) The petition raising any question as to the construction or effect of the decree, and any counter-petition.
- (e) The judgment of the Court on such question.
- (f) The copy of the judgment of the appellate Court or Courts (if any).

When possession of immovable property is given in pursuance of the decree—

- (g) The *nazir's* return of delivery of possession.

*File C* shall contain all other papers.

**356.** Every record under Class V shall consist of one file which shall contain all the papers relating to the case. It shall be styled and marked File D.

**357.** Security bonds filed by guardians or persons other than guardians in suits, cases and execution proceedings and those filed in cases under the Indian Succession Act, 1925, not otherwise provided for, shall be separated from the record to which they relate before the record is despatched to the Record Room, and kept in a guard file, serially arranged, in the safe custody of the Sheristadar of the Court in which the bonds are filed. The Sheristadar shall enter the necessary details of the bonds in an index to be maintained for the purpose and attached to the guard file. Such bonds shall be preserved, when they have been executed by Receivers, until three years after their discharge, and when they have been executed in a suit or case in which the decree or order directs payment by instalments, until three years after the date of the last instalment allowed by the Court, and, in all other cases, for 25 years from the date of their execution.

**358.** (1) The record of an appellate Court shall be arranged in the same way as that of the Court of original jurisdiction, except that there shall be no C1 File in respect of Class I records, the papers which would belong to that file where additional evidence is taken being attached to the C2 File.

(2) The files shall be marked *A, B, C, D, E*, as in the Court of first instance according to the nature of the suit or case.

NOTE 1.—The copies of the judgment and decree which accompany a memorandum of appeal should be placed with File C<sub>2</sub> or D as the case may be.

NOTE 2.—In case of Civil Appeals, except miscellaneous appeals, the certified copies of judgments and decrees filed with the memoranda of appeal should be returned to the appellants on their applying for them: after the disposal of the appeals, since the original record is kept with the appellate record in the District Record Room. In the case of appeals from the decisions of Settlement Officers and civil miscellaneous appeals, the corresponding documents should not be returned, but should be retained with the appellate records.

**359.** The splitting up of the record and the distribution of the papers into the proper files must in all cases be made immediately after the first hearing and shall be continued from day to day as the case proceeds.

## 2. The Title Page.

**360.** To each file of every record under Classes I, II, III, III-A, IV and IV-A shall be prefixed a title page in the prescribed Forms Nos. (J)4 to (J)11, Volume II, showing the period of its preservation.

**NOTE.**—No title page need be attached to records of cases referred to in rule 400 ~~post~~ until these are called for by some superior Court. Then the title page of the first file, according to classification, shall be attached.

**361.** The title pages shall be of different colours:—

File A	..	..	..	White.
File B	..	..	..	Red,
File C, C <sub>1</sub> , C <sub>2</sub>	..	..	..	Yellow.
File D	..	..	..	Green.
File E	..	..	..	Blue.

## 3. The Table of Contents.

**362.** Prefixed to every file there shall be a table of contents in Form No. (J)12, Volume II.

**363.** (1) The table of contents (except column 2 thereof) shall be written up in English day by day as papers are filed and the case proceeds, and, except as otherwise provided, shall show the papers in the order in which they are filed. The pages in the file (exhibits excepted) shall be numbered consecutively, and column 2, which should be kept blank until, and filled in after the file is complete, will give consecutive numbers of the pages. Column 1 will give the consecutive number of the different papers in the file irrespective of the numbers of pages which they contain.

**NOTE.**—The sheristadar shall make the first entries in the table of contents in respect of the papers filed with a plaint or original petition or memorandum of appeal at the time of registration or cause them to be made by any of the ministerial officers in the office. Thereafter, the table must be written up from day to day by the Bench Clerk as each new document or paper is filed in the course of trial. Entries in respect of papers filed on days other than hearing days shall be made as they are filed by the clerk in charge of the record, who will also fill in column 2 when the file is complete.

(2) The transfer of any paper from one file to another shall be noted in the remarks column of the table of contents of both the files. A new number will be given in the table of the file to which the paper is transferred.

**364.** Exhibit are not to be shown in the table of contents. The list which is attached to them under the following rules will alone be shown in this table, and will bear serial and sheet numbers.

**365.** The lists, and the documents referred to in them, shall not be attached to any file while the trial is proceeding. When the trial is over, the lists shall be numbered with their proper serial and sheet numbers, and shall be affixed to the file to which they belong, being in every case the last papers which are attached to it. The necessary entries in connection with such lists shall then be made in the table of contents.

## 4. The Order-sheet.

**366.** The order-sheet [Form No. (J)13] shall be written in English and shall contain all orders passed by the Court.

**367.** The name of the presiding Judge shall be written on the top of the order-sheet when a case is filed and when it is taken up by another Judge his name shall be similarly entered above the orders passed by him.

An order-sheet shall be attached to the record of every suit or case other than a suit under Small Cause Court procedure and all orders shall be recorded thereon.

**NOTE 1.**—Orders shall never be written on petitions, returns, reports and other similar documents. The orders and the reasons thereof shall except as provided in rule 370 be recorded only in the order-sheet and the serial number therein with the date of the order passed and no more shall be noted at the head of the petition, report, etc.

**NOTE 2.**—It is not intended to prohibit the writing of such routine orders as “call for the record” “put up with the record”, etc., on petition. If the record of the case to which such petition or other document relates is in the District Record Room and it is necessary to send it there for being attached with the record, suitable order may be endorsed thereon. If in the special circumstances of a case it becomes necessary that immediate order should be passed on a petition, or any such document, the order must be transferred to the order-sheet at the earliest opportunity.

**369.** The order-sheet, being intended to show the course of a suit or case from first to last, shall also contain a note of every order made in the suit or case, and shall show the date of, and the proceedings at, every hearing. It is to be a faithful history of the case and all proceedings taken in it and at the same time it should be so drawn up as to show all the details of the case at one view, and yet be as concise as possible. It shall show, among other matters, the dates on which the plaint and written statements were filed, issues were recorded or amended, witnesses examined and their names in the order in which they are examined, the date of the delivery of judgment, of the signing of the decree, and of any application for review of judgment or amendment of the decree. It shall also contain a note of other proceedings and of the fact of any objection being made thereto, and if witnesses are in attendance when a case is adjourned, the fact shall be noted with an order to attend on the date their attendance may be required.

**NOTE 1.**—Orders in proceedings under the C. P. Code, for the restoration of a suit or appeal, or for a review of judgment (see the last Note to rule 344), should be entered in the order-sheet of the main suit or appeal. A separate order-sheet should not be prepared. In all cases the order of an appellate Court calling for the record of a suit or appeal, should be recorded on a separate paper and reproduced on the order-sheet of the suit or appeal when the records have been received from the lower Court. If the orders thereon are lengthy, the instructions given in the following rule (370) should be followed.

**NOTE 2.**—Records of proceedings for transfer arising out of applications under section 24, Civil Procedure Code, shall be retained in the Superior Court where the proceedings started. When such proceedings are disposed of, and the main record has been called for by the Superior Court, the final order passed shall be reproduced in the order-sheet of the main record before its return to the lower Court. Otherwise the final order shall be communicated to the Court concerned for reproduction in the order-sheet of the main record.

**370.** (1) Orders, the reasons for which require to be recorded at length, shall not be written on the order-sheet, but a note of the order and of the date on which it was made, shall be entered in it.

(2) Orders directing anything to be done by parties or their pleaders shall be signed then and there by the parties or their pleaders.

**NOTE 1.**—While every endeavour should be made to get the signature of the pleaders concerned to important orders, their attention is drawn to the fact that it is not the duty of the officers of the Court to call upon the pleaders to sign the orders issued, or to inform them of the nature of the orders passed. It is for the pleaders to be present at the proceedings to make themselves acquainted with the orders passed. (*Robert Watson v. Ambika Dass*, 4 C.W.N., 237, 238).

**NOTE 2.**—Pleaders should invariably append the date when signing orders and proceedings in token of their being communicated to them, but nothing should be written other than signature and date.

**371.** The order-sheet may be written by an officer of the Court at the dictation of the presiding Judge, who, however, shall sign as soon as possible after it is so written and be responsible for the correctness of the entries in it. Important orders or orders which call for the exercise of judicial discretion or discrimination should always be drawn up in the presiding Judge's own hand. Time may be abbreviated by the use of rubber stamps for recording routine orders.

**NOTE.**—A presiding officer's full signature should always appear against all orders written by him under the provisions of this rule.

### 5. The Record.

**372.** The pleadings, applications, and proceedings in every suit or case shall be attached as the trial proceeds to the file to which they belong as soon as possible after they are filed and shall be arranged in the order in which they are brought before the Court.

**373.** The depositions of witnesses shall be arranged in the order in which they are given. The examination of the parties recorded by the Court under Or. 10, C. P. Code, shall precede such depositions. The depositions of witnesses examined by the Court shall be placed after the depositions of witnesses for the parties.

**374.** No record of any case or a portion of it shall for any purpose be removed from the Court building or sent to any person other than an officer of the Court, except under an order in writing of the presiding Judge:

Provided that if any Judge requires a record at his residence, he may take charge of it.

**NOTE.**—The taking of records and other Court papers by ministerial officers to their houses for the purpose of their work is strictly forbidden, and this practice wherever it exists should be at once stopped. Records removed from office may be lost, stolen, destroyed by fire or otherwise damaged.

**375.** In places where Courts are built of inflammable materials but there are fireproof record rooms, as much use as possible should be made of the record room in storing the records of pending cases as a measure of comparative safety.

**NOTE.**—While it may not always be possible to remove daily to the record room all records, registers, etc., the aim should be to see that as many of the records, registers, documents, etc., as can be housed in a safer building should not remain overnight in the Court or office room of *Kutch* buildings.

### 6. Documents\*.

**376.** (7) All documents produced with the plaint or written statement or filed in Court by a party or witness at a later stage shall be accompanied by a list in Form No. 5 of Appendix H, C. P. Code [Form No. (J) 22, Vol. II].

**NOTE 1.**—If any document be torn, worm-eaten or damaged in any other way, a clear note to that effect must be made in the list. The ministerial officer whose duty it is to receive the documents shall verify the items entered in the list and note the fact of verification in such a manner that no new item can be added to the list subsequently. Any peculiarity in the condition of any document about which there ought to be a special reference in the list shall be brought to the notice of the Judge.

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\*Although these rules, as they stand, do not apply to proceedings before Commissioners appointed under Part III (Or. 26) of the C. P. Code, it is desirable that Commissioners should be directed by the Courts issuing the commissions, to comply with them as far as practicable, and always to submit, along with their reports, lists of the documents produced before, and made use of, by them (G. L. No. 4 of 22<sup>nd</sup> May, 1901.)

**NOTE 2.**—When documents consist of shop-books, collection-books or the like, the items or entries intended to be tendered as evidence at the trial and exhibited should be marked with “flags”, at the time of filing them without which the Court may refuse to receive such books.

**NOTE 3.**—Documents filed should bear at the top consecutive numbers in bold figures corresponding with the numbers in the list [Form No. (J) 22] to enable the officer receiving the documents to verify the items without loss of time.

(2) If any such documents cannot, by reason of their number, bulk or size be attached to the record or kept tied in a piece of cloth, or if convenience or safe preservation of the documents demands, in the opinion of the Court, that they should be kept in a suitable box, a box of adequate size and properly labelled shall be provided by the person by whom or at whose instance they are filed. If the Court’s order for the supply of such box be not complied with, the Court may refuse to receive the documents and the party filing or his pleader shall be bound to take them back.

(3) If the documents are kept in a box, the list mentioned in sub-rule (1) shall be furnished in duplicate, one copy of which shall be kept with the record and one in the box.

**377.** Should any document which has been partially erased or inter-lined or which otherwise presents a suspicious appearance, be presented at any time in the course of proceedings a note should be made of the fact and if the Court sees sufficient cause the document should be impounded under Or. 13, r. 8. If any document be presented which appears to have been executed on unstamped or insufficiently stamped papers, action should be taken under secs. 33 and 35 of the Indian Stamp Act, 1899.

**378.** If any document included in the list is referred to in the proceedings or shown to a witness before it is tendered in evidence and formally proved, it should immediately be marked for identification.

**379.** Every document “admitted in evidence” shall be detached from the list and annexed to a separate list in Form No. (J)23, Volume II, after being immediately endorsed with the particulars stated in Or. 13, r. 4, and signed or initialled by the Judge in the manner required by that rule, and marked with an exhibit number.

**NOTE.**—When a document of historical or antiquarian interest or an original record of the High Court is produced or tendered in evidence, the Court before which it is produced should make every possible endeavour to prevent its being defaced by endorsements or exhibit marks or by having the seal of the Court impressed upon it. If the presiding Judge will use his common sense, some means of avoiding such disfigurements will probably suggest itself. The parties will probably agree to a photographic copy being substituted for the original, or the document may be enclosed in a sealed cover, or in a locked and sealed box, the necessary particulars being endorsed on the outside. If other means fail, careful measures should be taken for the safe custody of the document pending instructions from higher authority.

**380.** Documents admitted in evidence shall be marked with numerals 1, 2, 3, etc., and capital letters A, B, C, etc., according as they are admitted on behalf of the plaintiffs/petitioners or defendants/opposite party and separate lists of the documents thus admitted shall be prepared by the Bench Clerk in Form (J)23 and signed by the presiding Judge. The documents shall be entered in the lists in the order in which they are admitted and marked. If the capital letters are exhausted, double capitals shall be used.

**381.** (1) When there are two or more parties defendants, the documents of the first party defendant may be marked A1, B1, C1, etc., and those of the second A2, B2, C2, etc.

**NOTE 1.**—As to documents of historical or antiquarian interest see the Note to rule 379.

**NOTE 2.**—In no case must exhibits be defaced in any way by judicial officers except in so far as the law permits, that is to say, by making them as exhibits filed in a specified case. For instance, particular passages in a document must not be underlined. Again, in the case of a will separate exhibit marks should not be placed against the name of each attesting witness. The signature when proved can easily be identified by description [General Letters No. 8 of 6th December, 1886, and No. 20 of 20th December, 1922].

(2) (a) Where an exhibit forms part of a voluminous document, such as an account book, *khata*, etc., it should be clearly indicated by means of a slip of paper pinned to the sheet or page on which it occurs, the exhibit mark being noted on the slip.

(b) When an entry in an account book is admitted in evidence, the portion so admitted shall be clearly indicated by surrounding the same in red ink or chalk.

**382.** When documents are admitted at the instance of the Court and neither party is willing to accept them as evidence on his behalf, they shall be marked I, II, III, etc.

**383.** When a number of documents of the same nature are admitted, as for example, a series of receipts for rent, the whole series should be marked with the same numeral and small letters of the alphabet in brackets, when put in by the plaintiff/petitioner [thus: 1(a), 1(b), 1(c), etc.], or with the same capital letter and numerals in brackets, when put in by the defendant/opposite party [thus: A(1), A(2), A(3), etc.].

**384.** If in a proceeding subsequent to the trial of the suit or on remand or by order of the appellate Court, further documentary evidence is admitted, exhibits shall be marked with numbers or letters consecutive to the number or letter on the last exhibit previously filed.

**385.** When an original document, after being marked for the purpose of identification, is returned, and a copy thereof substituted under the provisions of Or. 7, r. 17 or Or. 13, r. 5, C. P. Code, a note of the return of the original shall be made in the lists referred to in the preceding rules.

**386.** (1) When a document included in the list in Form No. (J)22, Vol. II, is tendered in evidence, it must, if rejected, at once be endorsed as prescribed by Or. 13, r. 6, and returned to the person tendering it, who shall give a receipt in column 4 of the list.

(2) Documents produced by a party to the suit but not tendered in evidence, if not returned earlier, shall, at the conclusion of the trial, be returned to the person producing them or his pleader after he has signed the receipt for the same in the proper column of the list. A pleader is bound to take back any document produced by his client and to sign the receipt referred to above. Documents produced by persons who are not parties to the suit are dealt with under the provisions of rule 391 *post*.

**NOTE 1.**—Parties or their pleaders would do well to ask for and take back from the Bench Clerk or other officer in whose custody they may be, all unexhibited documents immediately after the hearing is finished. If they are not taken back or accepted when returned, the documents remain entirely at their risk.

**NOTE 2.**—If any pleader refuses to take back a document returned to him, the presiding Judge may then giving him 7 days' notice arrange the destruction of the document without having recourse to the procedure in rule 389.

**387.** (1) No document shall be returned which by force of the decree or order of the Court has become void or useless, the rights of the party filing it being completely provided for by the decree or order.

(2) If by force of the decree the mortgage instrument has become void or useless, as, for instance, in a case where the suit is upon a simple mortgage bond and the rights of the plaintiff under it are completely provided for by the decree, the return of the instrument will be unnecessary. It should however be returned where his title in any way still depends on the instrument, *e.g.*, when the suit is brought upon a usufructuary mortgage on the ground that possession is withheld.

**388.** When a plaint is returned before any action is taken on it, for filing in the proper Court, all the papers filed with it including the *vakalatnama* should be returned to the person who filed it.

**389.** Great care should be taken that documents not admitted in evidence are not mixed up with the exhibits in the case. Unexhibited documents if not taken back by the parties or their pleaders shall before the judgment is pronounced be removed from the record and placed elsewhere with a fly leaf attached to them marked with the number and name of the suit and the name of the party or pleader filing the documents. They shall not be sent to the District Record Room but shall be destroyed at the end of six months from the date of the final order of the Court in the suit or proceeding in which the documents were produced, after giving such notice to the parties or their pleaders as the Court considers proper.

NOTE 1.—A complete list of documents, etc., shall be prepared and entered in a book a month before the destruction showing the number and year of the case, name of person or pleader filing, nature of document, etc., and an intimation sent to the local Bar Association that the list is open for inspection. As the documents are destroyed the date of destruction should be noted in the remark column of the list.

NOTE 2.—Presiding Judges should see that all documents not taken back are listed at regular intervals and the list is put up before them and that the documents are destroyed without fail at the time prescribed by this rule.

**390.** The following note shall be entered at the foot of every copy of a decree granted to the parties or their pleaders to a suit or case:—

“The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve, as they will be destroyed at the time prescribed by the High Court.”

NOTE 1.—The above note shall be penned through if there are no exhibits for return.

NOTE 2.—Presiding Judges of outlying Courts should see that exhibits are as far as possible returned to the parties or their pleaders before the periodical despatch of records to the District Record Room.

**391.** (1) A private person, not a party to the suit, producing a document in Court in compliance with a summons, should be required to state in writing the address to which the document is to be returned, if not returned to him personally. If it is desired that the document should be returned to a pleader, a *vakalatnama* shall be filed along with the document.

(2) Where the document is not tendered or admitted in evidence it shall be returned at once to the person producing it either personally or by registered post.

(3) Where the document is admitted in evidence, a certified copy thereof shall be prepared and placed on the record, if not already there. The original shall then be returned to the person producing it personally or by registered post, or to his pleader unless the genuineness of the document is in controversy, in which case the original shall, unless the Court otherwise directs, be returned after the trial is concluded, or, in

cases where an appeal lies, after sufficient time has been allowed for appealing, or, if an appeal is preferred, after the determination thereof. The word "appeal" includes a second appeal where a second appeal lies.

(4) (a) In the case of voluminous documents, such as account books or collections of zemindary papers, which cannot conveniently be returned by registered post, the person producing them shall, if they are not returned to him at once, be informed in due course by registered letter that he is at liberty to take them back, and that his reasonable travelling expenses will be furnished.

(b) This procedure shall also be adopted where the person producing the document states in writing at the time of production that the document is of value to him and that he will take it back personally.

(5) In cases where the person producing a document has any pleader or mukhtar authorised to take back documents on his behalf, the document may be returned under the foregoing rules to such pleader or mukhtar, unless at the time of production the person producing it states in writing that it should be returned to him personally or by registered post.

(6) (a) Before a document such as is referred to in sub-rule (1) is called for at the instance of a party to the suit, such party shall deposit a sum sufficient to meet such expenses as are likely to be incurred, including the cost of returning the document by registered post, the cost of preparing a certified copy under sub-rule (3) and in cases under sub-rule (4) the travelling expenses both ways of the person producing the document.

(b) In cases under sub-rule (4) the travelling expenses shall be transmitted to the person producing the document along with the registered letter therein referred to.



## CHAPTER 18

### INSPECTION OF RECORDS NOT SENT TO THE DISTRICT RECORD ROOM.\*

**392.** No record or paper not deposited in the District Record Room shall be inspected by any person without the permission of the presiding Judge of the Court to whose file it appertains.

**393.** The Court may permit a party to the suit or his advocate or pleader or mukhtar to inspect the record of a pending case fixed for the day. No notes (other than such notes as are permitted by Note 2 to Rule 394) or extracts shall be taken from any portion of the record.

**NOTE 1.**—When the inspection of any original document is allowed in Court, the Bench Clerk in attendance should, for that purpose, make over to the legal practitioner concerned the document or the section of the file containing the document required for inspection. After inspection he is required to replace it in its proper position in the file with his own hand. He must see that exhibited documents are not removed from the list with which they are annexed. He should also watch the inspection and be held responsible for the documents.

**NOTE 2.**—Inspection of record of a pending case fixed for the day should ordinarily take place in the office in the presence of the Sheristadar before the sitting hour. The inspection should be allowed upon the same conditions as in Note 1.

**394.** The presiding Judge may either in his presence or in the presence of his Sheristadar allow inspection of records not sent to the District Record Room to public officers and advocates or pleaders or mukhtars in the case subject to the general conditions laid down for inspection of records in the Record Room (*vide* rule 453, *et seq post*). He may, by general or special order in writing, prescribe upon what conditions and at what time and place such inspection may be allowed. No searching fee shall be levied. He should be careful that his orders do not interfere with the right to demand production of documents on notice and the consequent right to take copies which an opposite party enjoys under Or. 11, r. 15.

**NOTE 1.**—The permission of the presiding Judge may be obtained on a written application in Form No. (M)36 which will be supplied free.

**NOTE 2.**—An advocate or pleader or mukhtar may read any document or record specified in his application the inspection of which has been allowed by the Court, but he shall take no notes other than such short memoranda (to be written in pencil on slips of paper to be provided by the officer before whom the inspection takes place) of the date and nature of the document, names of parties, etc., as may be necessary to identify or describe the document or record in case a copy is required; but this permission does not extend to the taking of a copy of the proceeding or document, or any part thereof, or to making extracts therefrom. The inspection of a record and the taking of notes is a privilege the abuse of which should not be allowed. The directions in this rule must be very strictly observed.

**NOTE 3.**—In disregard of this rule, surreptitious copies of or extracts from papers in a record are allowed to be taken or furnished, the ministerial officer concerned shall be held responsible and severely dealt with. (*See*, rules 501 and 572.)

\*As to inspection of records in the record room, *see* rule 453 *et seq.*

## CHAPTER 19

### THE TRANSMISSION OF RECORDS TO THE DISTRICT RECORD ROOM AND DISPOSAL OF RECORDS NOT SO SENT.

The records of decided, contested and uncontested suits and cases of Classes I, II, III and III-A other than those referred to in rule 400, and the records of miscellaneous non-judicial cases and of cases belonging to Classes IV and IV-A shall be forwarded to the District Record Room by judicial officers at headquarters in the course of the third month and by judicial officers at out-stations in the course of the sixth month next succeeding that in which they were decided or disposed of.

**NOTE 1.**—For the purposes of this rule, suits (including mortgage suits) in which preliminary decrees are made are not finally disposed of till proceedings on the preliminary decree are terminated by a final decree or otherwise:

Provided that when no proceedings are taken to obtain a final decree, the record shall be sent to the record room, in the case of mortgage suits, on the expiry of three years from the date fixed for the payment of the sum declared in the preliminary decree to be due, and in other cases, on the expiry of three years from the date of the preliminary decree.

**NOTE 2.**—Where final decrees are passed on compromise in mortgage suits, and there are instalments to be paid extending over three years, the records shall be sent to the District Record Room when the final decrees are passed.

**NOTE 3.**—The date of disposal of an application to deposit rent shall, when the deposit is under section 6(1) (a), (b), Bengal Tenancy Act, or under section 70(1) (a) and (b) of the Cooch Behar Tenancy Act, be deemed to be that on which the money-order acknowledgment is received, and if the amount be refused by the payee or returned undelivered, that on which the amount is credited into the treasury under the order of the Court. In the case of deposit under sec. 61(1) (c), (d) of the Bengal Tenancy Act, or under section 70(c), (d) of the Cooch Behar Tenancy Act, the date of disposal shall be deemed to be that on which the deposit has been paid away, or, if it has not been paid, that on which the notice prescribed by section 63(ii) of the Bengal Tenancy Act, or section 72(2) of the Cooch Behar Tenancy Act, has been served.

**NOTE 4.**—Records of suits dismissed on compromise, should be forwarded to the District Record Room under this rule for preservation and destruction there under Rule 458. Such suits do not come within the purview of Rule 400(1)(iii).

**396.** District Judges shall fix the dates on which in the course of the month, the record from each Court, at headquarters and out-stations, respectively, shall be despatched to the District Record Room, the dates being so arranged as to secure an even distribution of work in the record room throughout the year.

**NOTE.**—The orders passed by the District Judge under this rule, fixing the dates for the transmission of records, shall be copied and posted in the record room and in the offices of the Court to which they relate.

**397.** A notice exhibiting the dates for despatch of records to the District Record Room which have been fixed by the District Judge under rule 396, shall be posted in a conspicuous part of the court-room of the Courts concerned at least 10 days before the dates, a copy also being sent to the local Bar Association.

(1) Applications for copies of documents in such records will not ordinarily be entertained unless they are filed in the Courts at Sadar at least 2 days, and in the outlying Courts at least seven days, before the date of despatch fixed by the District Judge under rule 396.

(2) In special cases the Court may entertain applications for copies filed with expedition fees up to and including the second day previous to the date of despatch.

**399.** (1) A separate list in Form No. (R)32, Volume II, shall accompany the records of each of the six classes. In the case of records under Class IV two lists shall be prepared, namely, one of records which contain both B and C and another of the records which contain C files only. These lists should be of uniform size and shape and will be bound up in separate annual volumes for each class of records of the same Court, so as to constitute a catalogue of records in the record room to be preserved for the same period as the records to which they relate.

**NOTE.**—Suits in which preliminary decrees have been passed should also be entered in the despatch list with a note in the remark column "To wait its term."

(2) The list required by this rule shall be prepared in duplicate by means of carbon paper and shall contain an entry of every suit or case (contested or uncontested) other than those referred to in rule 400 *post*, disposed of during the period to which the list relates. The duplicate copy shall be forwarded to the District Judge under a separate cover and will be returned to the issuing Court duly signed by the record-keeper who shall acknowledge that the records have been received.

**NOTE 1.**—Every list in Form No. (R)32 shall be given a serial number by the issuing Court, and the duplicate carbon copy shall be preserved for one year from the date of despatch by the Court.

**NOTE 2.**—When a paper is sent by a Court to the District Record Room for being attached to any record, the record room clerk concerned shall, after repunching the court-fee label (if any) attached to it, index it in the table of contents of the proper file.

(3) If any record included in the list is kept back for any reason the fact should be noted in the remarks column.

**400.** (1) Notwithstanding anything contained in the rules in Chapter 20, the record in the following cases shall be preserved for one year and shall consist of one file only unless the distribution of papers into proper files (*vide* Rules 348-358) has already taken place before disposal:—

- (i) Where the plaint or memorandum of appeal has been rejected.
- (ii) Where the case has been dismissed for default under Order 9, rules 2 and 3.
- (iii) Where the case has been dismissed on satisfaction before decree.
- (iv) Where the plaint has been returned for presentation to the proper Court.
- (v) where the suit stayed under section 34 of the Bengal Agricultural Debtors Act, 1935, has been struck off for non-appearance of parties, after service of notice on them to show cause why the stay order should not be vacated. [General Letter No. 5 (Civil) of 1949.]

**NOTE 1.**—In case (ii) the file will be split up when an application for restoration is filed and if the case is restored to file the ordinary rules will apply as regards destruction.

**NOTE 2.**—In cases where costs have been awarded by the final order, the record shall be treated as File C of Class III or File E of Class III-A, as the case may be, and shall be excluded from the operation of this rule; accordingly such records shall be forwarded to the record-room under rule 395.

(2) On the record of every such case the ministerial officer in charge shall stamp or write conspicuously the words 'Rejected', 'Dismissed for default', 'Satisfaction', or 'Plaint returned', as the case may be.

(3) The records of cases referred to in sub-rule (1) shall be entered in a separate list in Form No. (R)32 omitting columns 3, 4, 6, 7 and 8 and kept in the respective Courts to which they belong. When destruction takes place, the fact shall be noted in such list and in the Court's register against the entry for the particular case. The list referred to above shall be preserved for three years.

(4) The period of one year mentioned in sub-rule (1) shall commence from the date of final disposal, or in the event of an appeal, from the date of the final order of the last appellate Court.

**401.** Copies of complaints and written statements returned by pleader commissioners with their reports may be destroyed immediately after the disposal of a case.

**401A.** When no steps are taken by the decree-holder in the Court to which a decree is transferred for execution and papers accompanying the decree along with the certificate under section 41, Civil Procedure Code, are returned to the issuing Court under rule 213, they may be destroyed by the latter Court after three years if it is satisfied that execution is barred by limitation.

**402.** All registers which have to be permanently preserved shall, after 12 years from the date of the last entry therein, be sent to the record room with a list in Form No. (R)33, Volume II.

NOTE.—On receipt of the registers in the record room, they should be checked with the list, shelved in the record room, and columns 6 and 7 of the list should be filled in.

**403.** The cost of carriage of records and registers sent to the record room shall be met by payment from the District Judge's contingent allowance, and the presiding Judge will give all necessary orders as to the mode of transmission.

## CHAPTER 20

### DISTRICT RECORD ROOM.

#### 1. Record Room arrangement and general duties of the Record-keeper and his staff.

**404.** The "recrod room" is a room set apart for the storage of *decided* cases, and the "record-keeper" is the ministerial officer in immediate charge of such records.

NOTE.—The term "record-keeper" includes the ministerial officer who may be placed by the District Judge in charge of the record room in an outlying station, where there is any.

**405.** Whenever possible it should be arranged, that each record room shall have only one combined entrance and exit, and that the record-keeper's table shall be so placed that no one can enter, or pass papers out of, the record room unseen by him.

NOTE.—Repunching peons should work near the record-keeper's table.

**406.** All outer windows, doors or openings in the walls of the record room, and all inner and outer windows, doors or openings giving access from the record room to any office or verandah which is not part of the record room, shall be protected by iron railings and wire-netting, in such manner as to render it impossible that papers should be passed through them, and the record-keeper shall, by periodical inspection, satisfy himself that the railings and netting are in good order.

**407.** The record-keeper must obtain and keep on his guard file a copy of the instructions issued by Government for the protection of buildings and records against fire, and he will be held responsible for ensuring that these instructions are carefully observed.

**408.** No smoking of any kind is on any pretence to be permitted in a Court, in any office room attached to a Court or in any part of the record room or its annexes. The Bench Clerk or the Sheristadar of each Court or the record-keeper or the ministerial head of the department concerned, as the case may be, will be responsible for seeing that this rule is strictly enforced, and bring at once to the notice of the Judge any infringement thereof.

**409.** The distribution of work among the clerks should be on a scheme to be approved by the Judge-in-charge and so far as possible it should be arranged on the basis of the various Courts in the district each clerk dealing with the records of the Court or Courts of which he is in charge and all matters connected with them. Each clerk shall be furnished with a duty card of his duties.

**410.** Any officer who permits the records of his office, or in his record room, to fall into disorder, is under the order of Government, held responsible for the expenses incurred in their rearrangement; and any officer receiving charge of an office or record room, the records of, or in which, may be in disorder, or so unmethodically arranged as to prevent the ready production of papers when called for, and who shall fail to make a timely report of their state, will be similarly held answerable for the cost of time and arrangement.

(This rule, being Rule 203, page 49, of the Bengal Records Manual, 1943, has been approved by the High Court.)

**411.** The following statements and reports should be maintained by every record keeper and submitted to the Judge-in-charge of the record room :—

(i) A fortnightly progress report in the form reproduced as Form No. (M)47 in Volume II.

(ii) A statement to be submitted during the first week of each month, in the form reproduced as Form No. (M)37 in Volume II, showing the total number of records received from each Court for the preceding month.

For the accuracy of these reports the record-keeper should be held responsible.

**412.** A plan and index of the record room shall be prepared by the record-keeper on the lines of the specimen plan and form of Index reproduced as Appendix B and as Form No. (M)38, respectively, in Volume II, and should be hung up in a conspicuous place in his office. The plan should indicate the position and serial number of the several racks and almirahs in each room, and the entrance to and number of each room. It should also include an end-section of the racks, showing the serial number of the several shelves in each. The information required for the "Index" should be set out below the plan, in alphabetical order, Court by Court.

**413.** This plan and index must be kept up to date, and should be corrected yearly after the periodical destruction of records has been carried out.

**414.** Wherever wooden racks exist, they should be replaced, as soon as funds can be provided, by steel racks of the standard pattern from time to time prescribed by the Government and approved by the High Court. In submitting plans for reconstituting a record room by the substitution of steel for wooden racks, care should be taken—

- (i) that the racks shall be so placed, that the light from the windows falls between the racks;
- (ii) that sufficient spaces are left for gangways between the racks;
- (iii) that there is sufficient provision made for the access of light and ventilation; and
- (iv) that the space between shelves is suitable (a) for the records, and (b) for registers.

**415.** The rooms, racks, and shelves in the record room should be numbered conspicuously. The rack number should be fixed at the end of each rack nearest the passage way, and at a height where it can be easily read; the letters A and B should be marked to denote the left and right hand shelves of the rack, and this letter should follow and be used with, the shelf number. The reference in an index of the record room, or in the despatch-list, will thus be "Room I, Rack I, Shelf I-A"—meaning the first shelf on the left hand side of Rack I.

**416.** An Index-sheet, typed or printed in foolscap size in Form No. (M)39, Volume II, and pasted on a flat board, should be hung in a conspicuous place at the end of each rack.

**417.** Every almirah in the record room should be clearly marked outside with a letter or figure, and the shelves therein should be numbered. A list in English, showing its contents should be kept in each almirah.

**418.** A statement should be prepared and pasted in every record room showing shortly, but accurately, what steps are necessary in order to trace a record in the record room.

**419.** The record-keeper shall maintain the following registers, in English:—

- (i) Index Registers, that is, Bound Despatch Lists [rule 399 (I)] which must be paged and indexed, so as to show at what page or pages the various classes of records will be found.
- (ii) An index of Index Registers, in Form No. (M)42, Volume II. This should, if possible, be kept in the record-keeper's office.
- (iii) The Register of records issued from the record room [Form No. (R)29, Volume II].
- (iv) The Register of applications for the return of documents [Form No. (R)30, Volume II]. This must be entered up daily and preserved for 12 years.
- (v) The Register of requisitions for documents [Form No. (R)28, Volume II].
- (vi) An attendance Register of the record-room staff, to be preserved for one year (*see* rule 767).
- (vii) Register of applications for payment [Form No. (R)38, Volume II].

**420.** The record-keeper shall also maintain an inspection guard file in the manner prescribed by Rule 987 and the Note thereto, *post*.

**421.** Registers not in current use and stored in the record room, should be arranged on shelves vertically and should be labelled on the back of the volume. Suitable divisions should be made in the shelves, which should also be strengthened, if necessary, for their reception, by means of vertical battens, iron supports or wire divisions placed at suitable intervals.

**422.** The more important duties of the record-keeper are stated below. It should not be supposed that the enumeration of duties is in any way exhaustive. It has merely been thought desirable to set out in detail certain of a record-keeper's more important duties, but record-keepers must understand that they will be held responsible for the due and prompt performance of all duties connected with the management and supervision of the record room which are prescribed by the High Court's rules:—

(1) The record-keeper should be provided with a sufficient number of copies of the rules relating to records for the use of himself and his subordinates, and he will be held responsible for keeping the same up to date.

(2) He should keep a register in which should be entered a description of all the office furniture in use in the record-keeper's office and record room.

(3) The record-keeper is responsible for the condition of the record room, the records, and the work done by the staff subordinate to him. He must set an example of punctuality and neatness in his work, and see that the record room and its offices are maintained in an orderly and tidy condition.

(4) The record room and the offices appertaining to it must be dusted and swept out regularly every day, and the record-keeper will be responsible for the general cleanliness of the record room and records.

(5) A plan of the record room must be prepared.

(6) All rooms and racks are to be numbered.

(7) The Index Registers or Lists of records sent to the record room must be completed by filling in columns 7, 8 and 9.

(8) All destruction should be entered in the Index Registers which should be indexed, bound, indexed on the back, and kept on end on shelves.

(9) The record-keeper must exercise proper personal supervision and control over the staff. He must make himself thoroughly acquainted with each man's work, and check it frequently; this applies both to current work and the work in the record room. He should know the distribution of records in the record room, frequently inspect the Index Register (comparing the information in columns 7 and 8, with the actual position of the records), and should see that the entries in column 9 of the Index Register are correctly made. He should also be careful that the indexing of bundles is properly carried out. He should work with the idea in his mind that the eventual result of his inspections will be that he will have opened, inspected, and correctly arranged every bundle of records in the record room.

(10) Should, at any time, any additional establishment be appointed to the record room, such staff shall work under the control and supervision of the record-keeper, who will be responsible for the proper division of work amongst them, and for drawing up and furnishing to each of them a statement of his duties.

(11) All menial servants whose services may be required for removing and replacing records, or keeping the record room clean, shall be admitted to the record room only under the supervision and control of the record-keeper, or such member of his staff as he may appoint for that purpose, and on such days and within such hours as he may direct by general or special order.

(12) The record-keeper must furnish each clerk with a written statement of his duties.

(13) The record-keeper must be careful to see that the High Court's Rules relating to exhibits are properly carried out, and that no unexhibited documents are received in the record room.

(14) He will be held responsible for the regular issue of reminder to the lower Courts (and to the High Court, where necessary) to return records.

(15) He will be held responsible that the Registers of records and documents removed from the record room are properly maintained.

(16) He will be responsible that the current work is kept absolutely up to date. It is of the utmost importance that this should be done, and at the very first sign of arrears, or of such a pressure of work as is likely to cause arrears, the matter must be reported at once by the record-keeper, through the gazetted officer in immediate charge of the record room, to the District Judge.

(17) The record-keeper must submit regularly and to time the fortnightly Progress Reports. He must further take particular care that the figures inserted in this report are accurate.

(18) The record-keeper is responsible that all orders relating to the record room are carried out. He is also responsible for keeping the lower Courts up to time in transmitting records to the record room.

(19) He is responsible that all records, and bundles of records, are kept in their proper places on the racks, and must on no account permit them to be left lying about the gang-ways or floor of the office or record rooms. All almirahs must be kept clean, and their contents in order, with a list of the contents in each almirah.

(20) The record-keeper's attention is called to the necessity for the careful and accurate preparation of returns, and until he has worked his staff up to a proper understanding of their responsibilities in returning accurate figures, he should check all figures himself.

(21) It is imperative that the record-keeper should insist that no unauthorised person enters the record room or the offices appertaining thereto, and that he should see that his directions in this respect are duly carried out.

(22) The record-keeper should pay particular attention to the rules relating to the second triangular punching of Court-fee stamps. He should periodically inspect the punches to see that they are in good order.

(23) He should also carefully observe the rules relating to destruction of records and should satisfy himself that the destruction of records or portions of records, as the case may be, is periodically and punctually carried out.

(24) He is responsible that the Attendance Register of his office is properly and accurately written up.

(25) He must arrange that applications for copies shall be promptly complied with.

(26) He is responsible for the proper application of the rules relating to payment orders and attachment of moneys.

(27) The record-keeper should, on each working day, examine the contents of at least one bundle of records. He should open the bundle, see that the records are in order, that no documents are missing, that the repunching of stamps has been



carried out, that the High Court's Rules and Orders for the arrangement of records have been complied with, and that destruction has been carried out. When he has satisfied himself that the work in that bundle has been properly done, he will retie the bundle and initial it in red ink, at the bottom left hand corner of its outer label, placing the date of his inspection immediately below his initial. At the same time he will make a similar entry in the Index Register.

(28) Should it be found that any papers are missing, that destruction is overdue, or that any suspicious circumstances are observable in connection with stamps, the fact should be reported to the District Judge through the Judge in charge of the record room.

(29) The record-keeper shall at once bring to the notice of the Judge in charge any irregularities which he may discover in the records deposited in the record room.

## 2. Receipt of Records in the Record Room.

**423.** No record should be retained in a District Record Room which does not find an entry in one of the prescribed record room registers with the exception of Small Cause Court cases.

**424.** On the arrival of a batch of records in the District Record Room, the record-keeper shall see—

(1) that each record is stamped with a rubber stamp bearing the words "District Record Room", the name of the district and the date;

(2) that the record corresponds in number and description with the entries in the despatch lists;

(3) that a second hole is punched with a triangular punch on each court-fee label distinct from the first and a note is at the same time made upon the title page of each record of the date on which the stamps on documents contained in it have been so punched;

(4) that the classification and arrangement under Chapters 16 and 17 of this Part have been carried out; that the contents of each file correspond with the table of contents; that the papers bear the court-fee stamps shown in such table; that the stamps have been duly cancelled, and that the papers requiring court-fee stamps have been properly stamped;

(5) that every document in a record chargeable with stamp duty bears the full stamp prescribed by law.

**NOTE 1.**—The second or triangular punching of court-fee stamps, prescribed in this rule, should be made on the day the records are received in the District Record Room, and should not await the inspection or examination of records.

**NOTE 2.**—The record-keeper is personally responsible for the effective discharge of all the duties under this rule. The appointment of a special peon or other officer to punch stamps on or to examine records received into the record room in no way absolves record-keepers from the duty of seeing that the stamps are duly punched and that there is no deficiency of stamp in any documents comprising a record.

**NOTE 3.**—District Judges and Judges in charge of the record room are reminded that in order to safeguard Government revenue, the provisions of this rule must be strictly observed.

**425.** If in the course of carrying out the duties enumerated in the preceding rule 424, the record-keeper finds that any stamp shows signs of having been tampered with, or discovers any deficiency, irregularity in cancellation, or other circumstances exciting suspicion, he must at once submit a report to the Judge in charge of the record room.

**NOTE.**—The reports should be submitted separately for each record and should not be delayed until the examination of a complete batch of records is concluded.

**426.** The record-keeper shall enter the date of the receipt of the records, the date on which they were actually due, the date on which they were examined and the total number of records in the space provided in the first-sheet of the despatch list. Any material delay in despatching

the records, or other irregularity or defect disclosed by his examination under rule 424 (including any omission by the parties or pleaders to sign the notice attached to the decree requiring them to withdraw their documents) should be brought to the notice of the Judge-in-charge not later than two days after the completion of examination.

**NOTE 1.**—Reports should be submitted jointly for each Court with reference to each batch of records received.

**NOTE 2.**—Reports under this rule, if forwarded for explanation to the Courts concerned, should be submitted to the Judge in charge on return, and when finally disposed of should be filed by the record-keeper in chronological order, and in a separate file for each Court.

**NOTE 3.**—Records in which there are minor or remediable defects or irregularities should not be sent back to the outlying Courts for being remedied, but they should be rectified by the record-keeper, *e.g.*, mistake in page numbering, omission to enter a paper in the table of contents, inclusion in one file of a paper belonging to another file, etc., etc. If any entries are necessary they should be made and initialled by the record-keeper and attested by the Judge-in-charge.

### 3. Arrangement of Records in the Record Room.

**427.** The records in a District Record Room should be arranged Court by Court, different racks being allotted for the records of each Court whenever the number and disposition of racks permit of this arrangement. When the records are placed on the racks, the component files should be grouped thereon according to the periods for which they must be preserved.

**428.** Separate sections of the racks should be provided for each group within which the files should be arranged according to the date of the decision of the case to which they relate. Thus the records of each Court should be grouped in the following way:—

Group No.	Class No.	Files.	Period of preservation.
1	Class I	A	For ever.
2	Class IV	B	20 years.
3	Class II	B	25 years.
4	Class I	C <sub>1</sub> , C <sub>2</sub>	12 years.
5	Class II	C <sub>2</sub>	12 years.
6	Class IV	C	12 years.
7	Class III	C	12 years.
8	Class III-A	E	6 years.
9	Class IV-A	E	6 years.
10	Class I	D	3 years.
11	Class III	D	3 years.
12	Class III-A	D	3 years.
13	Class V	D	3 years.

**429.** The records of each group should be made up into bundles of convenient size, provided that no bundles should contain the records of more than one year. The bundles containing the records of each group should be placed in juxtaposition in the spaces allotted in the racks to each group, care being taken to economise as much space as possible.

**430.** In the disposition of bundles on the racks regard should also be had to the daily work arising in the record room, and the arrangement should be such as to facilitate access and minimise removal and displacement.

**431.** As the time for destruction of the records of a particular year arrives, the bundle or bundles for that year will be removed from the rack or section of a rack which they occupy, and the rack or section will then become available for the records of the incoming year.

**432.** (1) No hard and fast rule is laid down to be universally applicable regarding the system of bundling records but it is left to the discretion of the District Judges to follow the system of flat bundles or the system of tying up bundles of records in cloth.

(2) In districts where the District Judges direct the system of flat bundles to be followed, records forwarded to the District Record Room should be opened out and made up into flat bundles of foolscap size. To the back and front of each bundle a flat board, or a piece of stout mill-board of foolscap size should be tied. Each bundle should not ordinarily exceed eighteen inches in depth but, in the case of iron racks of the old standard pattern, two bundles of a convenient size may be made up, so that the entire depth of the shelf may be fully utilised.

(3) Where the system of tying up bundles of records in cloth is directed by the District Judges to be followed, the bundles should be made up and indexed in the manner required by these rules, the index on cloth being rewritten from time to time should it become illegible.

(4) Reversion from one system of depositing records to another system, as above, is permissible provided no extra expenditure is incurred on account of extra staff for the purpose.

**433.** On the board in front of each bundle there shall be placed a label in Form No. (M)41, Volume II, and the space showing the due date of destruction shall be filled in. The blank half of the form will be used for noting the removal of records from, and their return to, the bundle. On removal of a record, its number will be noted on the blank half with the date of its removal; and on its return the note will be crossed out. When the blank half of the form has been filled up, for the purpose of further entries a clean sheet of foolscap paper should be pasted over it, care being taken to make a note on this paper of all records taken out of the bundle which have not then been returned.

**434.** A wooden board, or paste board, or tin-sheet index, 8"×13", setting out, in English, the Court and the class of records kept on each shelf of the record rack should be hung on the shelf by small screw hooks which can be removed when the position of the records is for any reason altered.

#### **4. Custody, Removal and Transmission of Records and of Documents contained therein.**

**435.** No record of a decided case shall be kept elsewhere than in the record room of the Court of trial or in the District Record Room.

**NOTE.**—Rule 395 prescribes the period after which records are to be sent to the District Record-room.

**436.** No record deposited in the record room shall be removed, or allowed to be removed, by the record-keeper, except for the use of the officers of the Court or with the sanction of the Judge-in-charge of the record room.

**NOTE.**—Rule 107 *et seq* prescribe the mode of transmission of records and documents called for under Or. 13, r. 10 or in compliance with summons issued under Or. 16, rr. 1 and 6.

**437.** (1) All applications and requisitions for documents or records other than those received from the Copying Department (*see* next rule 438) shall on receipt be entered by the record-keeper (or by a clerk under his personal direction) in a register in Form No. (R)29, Volume II, and then handed for compliance to the clerk in charge of the required document or record. The latter shall immediately enter the application in the register and bring the required document or record to the record-keeper, who shall then despatch it to the requiring Court, after noting compliance in column 8 of the register in Form No. (R)29. On return of the record he shall note in column 9 of the register the date of such return.

(2) When a requisition is so defective that the record room staff cannot comply with it, it shall be returned to the requiring Court or officer with the defects specifically noted and the reason for non-compliance endorsed on it and the record-keeper shall note the return in column 8 of the register in Form No. (R)29.

**NOTE 1.**—A separate requisition shall be sent for every record or for any number of documents out of the same record called for by any Court.

**NOTE 2.**—A memorandum of removal with the date should also be made in the remarks column of the despatch list against the entry relating to a record removed.

**NOTE 3.**—Requisitions or applications for records should, at the time of registration under this rule, be stamped with a date stamp and numbered serially.

**NOTE 4.**—All action necessary to comply with a requisition for a record, including the preparation of the letters to accompany the record and advising the despatch in Forms Nos (M)12 and (M)11, Volume II, and the packing and despatch of the record, shall be taken by the record-keeper or a clerk in his office deputed for the purpose.

**NOTE 5.**—The memorandum of acknowledgment in Form No. (M)12 from the receiving Court should, whenever possible, without causing undue delay, be enclosed with other communications sent by outlying Courts to the record room at Sadar.

**NOTE 6.**—It shall be particularly impressed upon the record-keeper and his staff that requisitions for records must not be returned on frivolous grounds. If the particulars given are sufficient to identify a record or if there are means for finding out the record, it must be traced even though the description as given by the applicant may in some respects be inaccurate. A case described by its class, number, name of Court and month and year of disposal can be located even though the date of disposal be not always accurate.

**NOTE 7.**—Requisitions marked "Urgent" shall be immediately complied with.

**NOTE 8.**—As to the procedure for return of records to the record room by the receiving Court, *see* instructions in G. L. No. 6, dated the 29th February, 1932.

**NOTE 9.**—Records or documents called for shall, except in the case of requisitions marked "Urgent," be despatched as soon as possible but in any case within a week from the date of receipt of the requisition. Defective applications under sub-rule (2) shall be returned within three days of their receipt. Inspecting officers will particularly observe whether the several provisions of this rule are strictly followed.

**NOTE 10.**—In order that records may not remain out of the record room for an unnecessarily long period, Courts should not ordinarily send requisitions for records before a suit or case is fixed for peremptory hearing.

**438.** In complying with a requisition for copies of papers contained in a record, the record-keeper should not permit the entire record to be removed to the Copying Department, but only such documents as are specified in the application, unless the documents specified in the

application constitute the entire record. Every application or requisition which necessitates the removal of papers from a record for the preparation of copies, or for any other purpose than return to the parties, shall, on receipt in the record room, be entered by the record-keeper or a clerk to be specially deputed for the purpose, in a register in Form No. (R)28, Volume II.

NOTE 1.—Entries relating to papers and documents removed in compliance with a requisition for information or for any purpose other than transmission to the Copying Department should be made in this register in red ink.

NOTE 2.—Clerks of the record room establishment should bring to the notice of the record-keeper any delay on the part of the Copying Department in returning documents to the record room. The record-keeper should take such steps as will secure their return and in case of unusual delay submit a report to the Judge-in-charge of the record room for such action as he thinks proper.

**439.** Applications for the return of documents from records in the District Record Room shall be made to the Judge-in-charge during the hours to be fixed by him and shall contain the following particulars: (i) Name of the Court to which the record containing the document appertains; (ii) nature, number and year of the suit, case or appeal in which the document was filed; (iii) date of disposal of the original suit or case and of the appeal, if any; (iv) name of the party or person on whose behalf the document was filed; (v) name of the applicant and the capacity in which he makes the application; (vi) description of the documents. The Judge-in-charge will pass an order "Return if no objection" and transmit the applications to the record-keeper who shall enter them in the prescribed register [Form No. (R)30].

(2) If there is no objection to the application being allowed, the record-keeper shall himself return the document ordinarily on the next open day but not later than the day following it during the time to be fixed by the Judge-in-charge and obtain the dated signature of the person taking the document on the application as well as in the appropriate column of the register in acknowledgment of the receipt. The application shall then be attached to the file which contained the document. If the applicant does not appear to take back the document within three days from the date of filing the application, the application shall be rejected.

(3) If the application has not been filed by the proper person, or is defective in respect of material particulars and the information given is not sufficient to enable the document to be traced by any other means, or there is any objection to the return of the document, the application with a report of the defects specifically noted on it shall be placed ordinarily on the next open day before the Judge-in-charge who will pass appropriate orders. Such applications as cannot be complied with for any of the reasons above shall ordinarily be returned to the applicant by the Record-keeper on the same day but not later than the next following day to be re-filed after removing the defects. If the application is re-filed, it shall be proceeded with as before. The date of re-filing the application shall be entered in red ink in column 2 of the register under its original serial number.

NOTE 1.—The Judge-in-charge of the record room should satisfy himself that documents or defective applications are returned within the time specified in the rule. It is recommended that he should from time to time have the documents or defective applications returned in his presence. The District Judge should at the time of inspection note whether the provisions of this rule are being followed.

NOTE 2.—The rejected applications shall be collected in monthly bundles in chronological order and preserved for three months.

**440.** Whenever a record or a document from a record is removed from the record room (otherwise than under rule 439) there shall be inserted in the place occupied by the record in its bundle or by the documents in its record, as the case may be, a removal slip in Form (M)43 on which shall be entered a full description of the record or document, and the purpose and date of its removal. Each such slip shall be initialled by the record-keeper. Where, however, a document or record is removed in compliance with a requisition from any Court, such requisition shall be used as a removal slip. When a record is removed for any purpose which would have the effect of transferring it to some other collection in the Record Room by reason of an alteration in the date of disposal for purposes of destruction (*e.g.*, in connection with appeal, remand, petition of re-hearing, restoration, review, etc., respecting the case) no such removal slip will be necessary.

NOTE 1.—This slip shall be used also when records are removed from their bundle, on receipt of an application for inspection under rule 455 *post*.

NOTE 2.—If the record removed is to be sent to another Court, the word "Removed" shall be stamped on its title page in bold type.

**441.** On return of a record or document removed under rules 438 and 440, an entry shall be made in Register (R)28 and the document shall be returned to its proper place, the removal slip being kept for future use after cancellation of the entry.

**442.** The records of cases called for by the High Court, on appeal from the judgments and orders passed therein, should be despatched within seven days from receipt of the requisition. In the event of any delay occurring in their despatch, a reply should be sent explaining the cause of the delay, and the probable date of their despatch.

NOTE 1.—Except in appeals from original decrees cumbrous and bulky exhibits, *e.g.*, account books, *khatas*, *zomindari* papers and the like, should not be sent to the High Court in second appeals unless specially called for, but a note showing the nature of such exhibits should be made in the letter advising despatch of the records. It will be sufficient to note "Account Books (or whatever the papers may be) are not sent by reason of their bulk."

NOTE 2.—When exhibits such as are referred to in "Note 1" above are sent to the High Court in connection with any appeal or reference, care should be taken to see that the instructions contained in rule 381(2) *ante* have been complied with.

**443.** In every appeal before the High Court from an interlocutory order made in a suit and coming under Or. 43, r. 1(q), (r) and (s), C. P. Code, only copies of the application for attachment before judgment, for the issue of an injunction, or for appointment of a Receiver, with affidavits and the petitions of objections thereto with affidavits and copies only of the orders relating to the matter should be prepared by the Court below at Government expense and sent to the High Court:

Provided that if either the appellant or any of the respondents requires any other papers to be called for, he should file a list of such papers in the Court below within a time to be fixed by that Court and also deposit there the costs of preparation of copies of such papers to be estimated by that Court within a time to be fixed by it. Provided further that the Court below will make suitable orders for compliance with its orders and send to the High Court copies of such papers within a reasonable time.

**444.** The following instructions should be observed in transmitting records from one Court to another:—

(1) If the two Courts are situated in the same station, the record should be despatched by hand properly packed with a peon book in which a serial number and date should be entered, and the signature of recipient

should be taken. The serial number and date appearing in the peon book should be reproduced in the remarks column of the Register of records removed. If the requisitioning Court is situated in a different station, records should be sent by parcel post, the postage being paid by means of service stamps.

(2) Records relating to different cases should be packed in separate parcels: Provided that if not inconvenient, such records may be packed in the same parcel but separately tied up.

(3) In the parcel containing a record should be enclosed a forwarding letter, and the cover of the parcel should bear the distinguishing number and date of that letter.

(4) A letter of advice should be forwarded simultaneously with the despatch of the parcel by post but separately and by ordinary letter post, and in it the number and date of the forwarding letter referred to in the preceding clause should be quoted.

(5) An acknowledgment should invariably be required from the Court to which a parcel containing a record has been sent, and in the event of none being received within a reasonable time, enquiry should be made to ascertain the cause.

NOTE 1.—All letters advising the despatch of civil records to the High Court (Appellate Side), and parcels containing such records, as also all returns of civil processes issued by the High Court (Appellate Side), should be addressed to the Deputy Registrar of the High Court, Appellate Side [G. L. No. 6 of 26th February, 1892.]

NOTE 2.—See rule 596.

NOTE 3.—The procedure in clause (1) of this rule is to be followed also where the District Judge sends for a record from the District Record Room.

NOTE 4.—For forms of letter and acknowledgment referred to in this rule, see Forms Nos. (M)12 and (M)11, Volume II.

NOTE 5.—Acknowledgments of the receipt of records sent out should be numbered and noted in the Register of records removed: they should then be filed in serial order on a new file, and should be made up ultimately into yearly bundles.

NOTE 6.—When an acknowledgment of the receipt of a record is two days overdue, the record-keeper should issue a postcard reminder [(M) 44] to the Court concerned, making a note of the issue in the Register of records removed.

**445.** Whenever possible, without offending any rule as to the period of return, records requisitioned by Courts at outstations and ready for return should be included in the batches of ordinary disposed of records.

**446.** When a record is received back in the record room, the following procedure should be observed:—

(1) The record should be carefully examined by the record-keeper to see that it is complete and in order. If the record-keeper notices that any document is missing or that the record discloses any other defect, he should at once report the matter to the Judge-in-charge.

(2) An entry should be made in column 10 of the Register of records issued [Form No. (R)29] and initialled by the clerk making it.

(3) The entry in the despatch list (R)32 should be cancelled.

(4) Unless the record is dealt with under rules 447 and 448, the removal slip should be removed from the bundle, the entry upon it cancelled and the record restored to its place.

(5) If the record is not restored to its original bundle for any reason, a note should be made in the despatch list that it is kept with record No. of of the Court.

(6) An acknowledgment in the prescribed form is to be sent with as little delay as possible.

NOTE.—The above procedure, as far as applicable, is to be followed when documents sent to the Copying Department, are received back. The entry referred to in sub-rule (2) is to be made in the appropriate Register (R)28.

**447.** (1) Where an original record, which has been called for on appeal, is received back in the record room, together with the judgment and other papers relating to the disposal of the appeal in the appellate Court, the original and the appellate record should be kept together. These records should be arranged according to the date of the appellate judgment. A note should be made in the remarks column of the bound list of records showing:—

(i) where the original record is to be found;

(ii) the date of the appellate judgment.

(2) The same procedure should be followed in the case of a record received back with an order for remand or rehearing, a reference being made in the bound list, to the shelf on which the record is ultimately lodged.

**448.** Original records received back from the High Court, together with the High Court's judgment on appeal, should be kept together and indexed "High Court Appeals." These records should be arranged according to the date of the High Court's final judgment. A note should be made against the various entries relating to the records in the remarks column of the despatch list, showing where the respective records may be found, and giving the date of the final judgment of the High Court.

**449.** It is the duty of the record-keeper to see that records sent out are returned without undue delay. With this object he shall cause the serial number of records not returned to be brought forward and entered in red ink in the register of records removed before any entries are made relating to a new year. He should also cause to be prepared from this register a reminder list consisting of entries of all records which have been out of the record room for more than three months. On the return of a record the entry relating to it prescribed by this rule should be struck out.

**450.** From time to time reminders should be issued by the record-keeper in respect of such records, and if they do not result in the return of the record, he should take the orders of the Judge-in-charge.

NOTE.—A note of all reminders issued should be made in the reminder list [(M) 45] and in the remarks column of the Register of records issued [Form No. (R) 29].

**451.** Lists of records which have been sent to the High Court should be prepared by the Courts concerned at intervals of not less than six months. These shall be placed before the Judge-in-charge with a view to securing the return of the records if the cases have been heard by the High Court.



**452.** The above rules so far as they are applicable shall be followed in sending and in complying with requisitions for records in pending cases.

### **5. Inspection of Records in the Record Room.\***

**453.** The record rooms of Civil Courts are not open to the public, but public officers of the district, including Sheristadars, may, with the permission of the Judge-in-charge, be allowed to enter the record room and to examine the record of any specified case free of any charge, provided that such entry is made in pursuance of a public purpose.

**454.** Advocates, pleaders and mukhtars duly authorised by any person in that behalf may, on payment of the prescribed fee [*vide* rule 514(7) (a) (ii)] examine any specified record; but in doing so shall make no notes, other than short memoranda (to be written in pencil on slips of paper to be provided by the record-keeper) of the date and nature of the documents, names of parties, etc., as may be necessary to identify the document or record in case a copy is required. Except where otherwise expressly provided for in the rules regarding the Copying Department, he shall not be entitled to take a copy of the proceeding or document or record, or any part thereof or to take extracts therefrom.

**NOTE 1.**—A notice in the sense of this rule should be exhibited, both in English and in the language of the Court, in the office in which records are inspected. No legal practitioner shall be allowed access to the record-room or the offices appertaining thereto, otherwise than in accordance with this rule.

**NOTE 2.**—No person inspecting a record or paper shall make any mark on or in any respect mutilate any record or paper which is being inspected.

**455.** Every application for inspection shall be presented on a printed Form (M)36, Volume II, with the prescribed fee affixed to it to the Judge-in-charge of the record room (or the officer designated by him for the purpose) between the hours of 10-30 a.m. and 4 p.m. on Court days and between the hours of 10-30 a.m. and 12-30 p.m. on Saturdays. The application shall clearly state why the inspection of record or paper is desired.

**456.** Any person named in an order for inspection may make such inspection only on days on which the court is open during such period as may be fixed by the District Judge between the hours of 10-30 a.m. and 4 p.m. on days other than Saturdays and between the hours of 10-30 a.m. and 12-30 p.m. on Saturdays. The inspection may be made on any day within ten days from the date of the order.

**457.** For the inspection of documents or records a separate table should be set apart, which should be kept quite clear and be so placed as to be in full view of the record-keeper. All inspections must be carried out on this table under the supervision of the record-keeper or of a clerk deputed by him for the purpose but on the responsibility of the record-keeper.

**NOTE.**—The officer watching the inspection should be held responsible for the documents. He should see that the record is handled with due care. As to general conditions regarding inspection, see 393 and 394.

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\*As to inspection of records not sent to the district record room, see rule 392 *et seq.*

## 6. The Destruction of Records.

486. The following table shows the periods prescribed for the retention of the various parts of the records in the various classes of suit or proceedings:—

Nature of suit or proceedings.	Number of years for which records are to be retained.						
	File A	File B	File C	File C1	File C2	File D	File E
1. In suits or appeals under—							
Class I .. ..	Perma- nent.	..	..	12	12	3	..
Class II .. ..	..	25	..	..	12	..	..
Class III .. ..	..	..	12	..	..	3	..
Class III-A .. ..	..	..	..	..	..	3	6
2. In execution cases under—							
Class IV [decrees in suits of Class I which come under rule 355 (2)].	..	20	12	..	..	..	..
Class IV (decrees in all other suits of Classes I, II, III).	..	..	12	..	..	..	..
Class IV-A (decrees in suits of Class III-A).	..	..	..	..	..	..	6
3. In miscellaneous non-judicial cases ..	..	..	..	..	..	3	..

Provided that the following records shall not be destroyed before 1975:—

- Class II*.—Records of B files of suits in which decrees were passed during the period from 1924 to 1949.
- Class III*.—Records of C files of suits in which decrees were passed during the period from 1924 to 1962.
- Class IIIA*.—Records of E files of suits in which decrees were passed during the period from 1924 to 1968.
- Class IV*.—Records of C files of cases for execution of decrees passed in suits of Classes II and III mentioned in (a) and (b) above.
- Class IV-A*.—Records of E files of cases for execution of decrees passed in suits of Class III-A, mentioned in (c) above.

NOTE 1.—The record of a case under section 95 of the Bengal Tenancy Act, shall be preserved for 5 years from the date on which the common management ceases; where a common manager is appointed of an estate in which one of the proprietors is a minor, the record shall be preserved for 8 years from the date on which the minor attains majority. As the period of preservation of the record will depend on the date of the termination of the common management or the date of attainment of majority by the minor, as the case may be, a conspicuous note should be made of this date on the title page.

NOTE 2.—The record of a case under the Indian Lunacy Act, 1912, shall be preserved for ever, or till 5 years after the date of recovery or death of the lunatic, if such be ascertained.

**NOTE 3.**—The record of a case under section 32 of the Land Acquisition Act (Act I of 1894) shall be preserved for 12 years from the date of disposal of the case or 3 years from the date of final application of the money under clause (i) or (ii) of section 32(1)(b) of the Act, whichever is later, when the Judge finds that the person to whom the land belonged had no power to alienate it, or for 3 years, when he finds that it belonged to a person who had the power to alienate it.

**NOTE 4.**—As miscellaneous judicial cases connected with suits or cases are classed according to the nature of such suits or cases the records should be preserved under this rule according to their classification.

**459.** The above periods shall be calculated as regards suits or cases (of Classes I, II, III and III-A) from the date of the final order or the decree of the Court of first instance, or in the event of an appeal from the date of the final order or decree of the appellate Court. In miscellaneous non-judicial cases the period shall be calculated from the date of disposal.

**460.** In cases of Class IV and Class IV-A, such period shall be reckoned from the date on which the application for execution was finally disposed of by the Court executing the decree or by a Court of appeal, whichever is the later date. For the purposes of this rule, each execution record shall be dealt with separately, irrespective of any other application to execute the same decree or order.

**461.** The period of preservation of the record of a suit or case, where the decree or the order directs payment by instalments, shall commence from the date of last instalment allowed by the Court.

**462.** Unreturned exhibits received in the record room with the records transmitted therein shall be liable to destruction at the expiration of one year from the date of the final order of the last Appellate Court, if notice of appeal has been given to the Court in which the documents were produced.

**NOTE.**—This rule is to be read subject to the provisions of rule 387, *ante*.

**463.** Before arrangement of the records in the record room, the record-keeper shall cause a list to be prepared and entered in a book of all unreturned exhibits to be kept in the following form :—

Name of Court.	Description and No. and year of case.	Nature of document.	Names of persons filing.	Name of pleader, if any.	Date of final order.	Due date of destruction.	Remarks.

**NOTE.**—Cumbersome and bulky exhibits, *e.g.*, account books, *khatas*, zemindary papers, and the like, which cannot be conveniently kept with the records should be preserved separately, *e.g.*, in almirahs, boxes and bundles with a fly-leaf marked with the number and name of the suit and the name of the party or pleader filing the documents.

**464.** To enable the parties who have filed documents in Court to withdraw the same before destruction, a final notice shall be published in Form No. (P) 57, on the District Judge's notice board in January and July of each year stating that all documents filed in the suits (to be therein enumerated) will unless previously reclaimed be destroyed after one month from the date of the notice. Such notice shall contain the name of the Court, the number of the suit in which the document

was filed, and the names of the parties and pleaders. If the document was originally filed in any outlying Court, the notice should be sent for publication in that Court's office as well as at the District Judge's office.

**NOTE.**—This notice should, if possible, also be served upon the pleaders and parties concerned at their last known address.

**465.** On the expiration of one month from the publication of the aforesaid notice, all unreturned documents will be destroyed without fail and the date of destruction should be noted in the remarks column of the list:

Provided that documents produced in Courts by Government officials or sent for from Courts or offices under Or. 13, r. 10, shall not be destroyed, but shall, if not previously returned, be transmitted to Courts or offices from which they came.

**466.** Destruction of records should be carried out quarterly, and the record-keeper shall in the first month of each quarter cause the B, C, and E files which are due for destruction to be removed from their shelves for the purpose and submit a report of the fact to the Judge-in-charge who, on being satisfied that the work has been properly done, should give order as to the date of destruction. As each record is destroyed, the necessary entries should be made in column 9 of the bound lists. Entries as regards the class of records destroyed during the quarter should also be made simultaneously on the Index Board.

**NOTE.**—Entries in columns 1, 2 and 3 of the Index sheet for racks [Form No. (M) 39] shall be made at the time the records are shelved in the racks. The entry in column 4 should be made as the records are destroyed.

**467.** Useless records may be sold untorn, but confidential records or private documents, such as exhibits, not taken back or returned, should be destroyed by burning in the presence of the record-keeper.

## CHAPTER 21

### RECORDS OF COURTS OF SMALL CAUSES.

**468.** In Small Cause Court cases no order-sheet need ordinarily be attached, the orders being recorded on the back of the plaint. When, however, the defendant appears and a case becomes contested, an order-sheet should be attached.

NOTE.—When the space on the back of the plaint is exhausted before an undefended case is disposed of, an order-sheet may be attached.

The record shall be prefixed by a table of contents and shall consist of only one file including proceedings in execution taken in a Small Cause Court. Papers connected with any such proceedings will be shown in the table of contents under a separate heading giving the number of the miscellaneous case, execution case, etc.

NOTE.—Papers should be arranged in the order in which they are filed, except that written statement (if any) shall be placed after the plaint.

**470.** The Rules in Part III should, as far as they may be applicable, be followed in the case of records of Courts of Small Causes.

NOTE.—The rules of the following subjects amongst others should be observed:—

Writing on order-sheet, endorsement and return of rejected documents, marking of exhibits, making a list of documents admitted in evidence, return of documents produced but not tendered in evidence, etc.

**471.** The records of suits decided by Judges of Small Cause Courts when presiding in such Courts shall not be forwarded to the District Record-Room, but shall be retained in the trial Courts until the period of their destruction, as hereinafter specified, shall arrive.

**472.** The records of suits decided by officers vested with the powers of a Small Cause Court Judge, shall in the course of the next succeeding month after disposal be deposited in the District Record Room at headquarters stations and the Munsifs' record room at outlying stations and preserved there until such time as they are destroyed under these rules.

**473.** The records shall be divided into two groups and sent in separate bundles to the record room with separate lists in Form No. (R)32, Volume II, each record being prominently marked A or B in accordance with the following classification:—

*Group A*—Records of cases in which any one is entitled to recover anything.

*Group B*—Records of cases in which no one is entitled to recover anything, e.g., cases dismissed for default or on satisfaction, in which the decretal amount has been paid or otherwise adjusted before the arrival of record, etc.

NOTE 1.—The record-keeper or the clerk in charge of the file (in outlying stations), as the case may be, shall note in the lists the date of removal and return whenever a record is taken back by the trial Court or any other Court in connection with execution and other proceedings or is called for under Or. 13, r. 10, C. P. Code. The lists shall be preserved for the same period as the records to which they relate. When records are deposited in the District Record Room, clerks placed in charge of the Small Cause Court files of the several Courts at *Sadar* will be able to obtain them on presentation of a requisition signed by the Sheristadar of the Court for the purposes of execution or other proceedings and will be entirely responsible for their custody or for them during the progress of such proceedings.

**NOTE 2.**—In the case of Small Cause Court records, the duty of repunching court-fee stamps imposed upon the District Record-keeper by rule 424(3), and the duties imposed by rules 424(4), 425 and 426, and the duty of destroying records in accordance with the prescribed rules shall be performed in the manner laid down in the said rules by the officer placed in charge of Small Cause Court records. The order placing an officer in charge of such records shall be in writing.

**474.** (1) The record-keeper or the clerk in charge of the records (in outlying Courts), as the case may be, shall arrange them chronologically, Court by Court, in groups and place them on the shelves in monthly bundles. The records in the District Record Rooms should be kept apart from the other records.

(2) The records will be kept in the bundles in order of their dates of disposal.

(3) The names of the groups will be prominently shown on the shelves and the space allotted to Group A should be sufficient for the accommodation of records for three years and that to Group B for one year.

(4) Besides Groups A and B there will be following two subsidiary groups formed out of records transferred from Group A by reason of steps taken in execution or of subsequent satisfaction:—

*Group A-1*—Records of cases in which execution has been applied for within three years either to enforce the decree or any unpaid instalment.

*Group B-1*—Records of cases in which the decree has been fully satisfied.

The records of these two groups will be made up into separate monthly bundles. A-1 bundles will be kept on the shelves with A bundles and B-1 bundles with B bundles of the corresponding month.

(5) The transfer of a record from A to A-1 or B-1 Group or from one bundle in A-1 Group to another bundle will be effected as occasion arises, regard being had to the provisions in clause (4) of this rule. When an execution is applied for there will be no difficulty in finding out the proper record from Group A or Group A-1 as the case may be.

(6) A conspicuous note should be made of the date of disposal and of the results of the suit and of every subsequent proceeding which has the effect of postponing the date of destruction of the record, on the outer sheet of each record.

**475.** Records of Groups A and A-1 left over after transfer in pursuance of the above rules by reason of execution or other proceedings shall be destroyed at the end of three years, and those belonging to Groups B and B-1 at the end of one year from their dates of disposal. After 12 years from the date of decree all records shall be destroyed whether there has been a satisfaction or not.

**Note 1.**—For the purposes of this rule, time should be counted from the date of the last instalment allowed by the Court.

**NOTE 2.**—If the decree be executed as a money execution case, a note must be made in the original record; and the record placed in the A bundle of the month in which final orders in the application for execution are passed.

**476.** Destruction shall be carried out monthly. The record-keeper shall during the first week of every month remove the bundles due for destruction and note the number of the cases in a bound book to be kept for the purpose. He shall also take the orders thereon of the Judge-in-charge or the presiding Judge of the Court, as the case may be, and then destroy the records making a note in the lists where necessary.

NOTE 1.—Lists destroyed shall also be entered in this book which is to be preserved for six years.

NOTE 2.—The provisions of rule 467 *ante* will also apply to the Small Cause Court records.

## CHAPTER 22

### RECONSTRUCTION OF CIVIL COURT RECORDS AND REGISTERS DESTROYED OR DAMAGED BY FIRE.

**477.** When records, registers, etc., are destroyed or damaged by fire, the fact should at once be reported to the High Court and the presiding Judge of the Court concerned should take personal charge immediately of their remnants and proceed with the work of reconstruction of records according to the following instructions.

#### **Instructions in the event of civil court records being destroyed by fire etc.**

(1) If any registers have been preserved, the Presiding Officer of the Court should take personal charge of them, and should look carefully through them in order to satisfy himself that no alterations or erasures have been made in the column showing manner of disposal. If he detects any such alterations or erasures, he should make careful enquiry about them. Every entry referring to the manner of disposal of cases should be attested by the Presiding Officer's signature in full and every *bona fide* alteration should be similarly attested. The Presiding Officer, if subordinate to the District Judge, should also open a small supplementary register showing fully the manner in which each case has been decided; and this register should be sent to the District Judge for safe custody.

(2) The following instructions are merely suggestions as to the proper course to be adopted in the circumstances indicated. For the purposes in view, pleaders are in the same position as ordinary witnesses in regard to whose examination the Presiding Officer must exercise his judicial discretion.

#### *A.—Disposed of suits.*

(3) If in any of these suits, decrees have either not been drawn, or, if drawn, copies have not been issued, the Presiding Officer should issue a notice calling upon all persons claiming decrees to come forward at once, and pointing out that delay will make it more difficult for them to establish their claims. When these persons appear, they, or their pleaders, should be required to put in applications containing a brief abstract of the case and the final order of the Court, whether decreeing or dismissing the plaintiff's claim in full or in part. The Presiding Officer should then cause a notice to be served upon the pleader of the Opposite-party to show cause why a decree should not be drawn in accordance with the statement contained in the application filed by the claimant of the decree. The pleader of the Opposite-party should be also examined at length, and, if necessary, should be examined on solemn affirmation, in order to ascertain whether the application filed by the claimant contains any false statement. This summary enquiry should disclose the nature of the suit of which the records were destroyed and the final orders of the Court in respect of each. When these have been ascertained, a decree may be drawn accordingly, which should be executed as an ordinary decree. The same procedure should be followed in respect of cases decided *ex parte*, except that the notice to show cause in these cases must be issued upon the Opposite-party.



*B.—Pending suits of which plaints have been destroyed.*

(4) A date should be fixed and notified by which all copies of plaints should be presented and the Presiding Officer should examine the plaintiffs and their pleaders, and any other person whom he may think necessary, for the purpose of satisfying himself on the following points:—

- (a) That a plaint was filed by the plaintiff to the same purport as the copy.
- (b) That the value given in the copy is the same as that given in the plaint originally filed.
- (c) That the plaint was not barred by limitation.
- (d) That the plaint was duly stamped and that process-fees were paid.  
In cases where the plaint was to be returned for deficit Court-fees, care must be taken to realise the deficiency.
- (e) Whether the principal documents, had been filed with the plaint or not. If they were filed, a list of such documents should be, at once, put in by the plaintiff or his pleader. Where possible, copies of non-registered documents filed with the plaint should be filed with the copy of the plaint, and in examining the plaintiffs and their pleaders, the Presiding Officer should try to satisfy himself with regard to the corrections and *bona fides* of these copies.

Upon satisfying himself on the above particulars, the Presiding Officer may admit the copy of the plaint, (which, however, should be first verified in the manner required by law and certified to be correct by the plaintiffs and their pleaders) and enface it with a certificate that the original plaint, duly stamped, was destroyed by fire, etc. Care should be taken that the opportunity is not taken to increase the value of these suits. The Presiding Officer might also refer to the registers kept by the stamp-vendors in his enquiries and he should get in all the copies of plaints before he issues processes in any case.

(5) The above instructions apply more especially to those cases in which the registers, as well as the records, have been destroyed. But in all cases, the certificate mentioned above should, after due enquiry, be enface on the copy of the plaint. If the registers have not been destroyed, the pleaders for the plaintiffs may be permitted to take notes from them free of charge, in the presence of the Presiding Officer.

*C—Affidavits.*

(6) Affidavits should be sworn again without renewal of fee, upon the Presiding Officer being satisfied by evidence that the parties making the claim were the parties who made the affidavits destroyed. The Presiding Officer should enface them with a certificate as above.

*D.—Execution cases disposed of.*

(7) When future applications for execution in such cases are made care should be taken to call for the record of the last proceeding from the District Record Room.

*E.—Execution cases that were pending or may be subsequently filed.*

(8) When a certified copy of the decree is in existence, the only question is how far the decree was satisfied, and this must be determined on such evidence as may be available. The Presiding Officer must exercise his own discretion in each case: it is impossible to lay down any general rule. Where no authenticated copy of the decree is in existence, the Presiding Officer will have to determine, in the first place, what the decree was, according to the instructions "A.—Disposed of suits." In cases where the period of limitation has expired on the date of renewing applications for execution, an enquiry should be held for the purpose of satisfying the Presiding Officer that the application was originally made and within the period of limitation.

*F.—Miscellaneous cases.*

(9) The above instructions should be followed, as far as practicable, in dealing with Miscellaneous cases.

*G.—Suits and cases pending in appeal.*

(10) In appeals in which a copy of the decree and judgment is produced, but there is no record to refer to, the best evidence obtainable as to the contents of the record must be taken, and the pleaders should also be encouraged to agree to a statement of their pleas and facts in one document. When parties wishing to appeal, are unable to procure copies of decrees and judgments the appellate Court should, as directed in instructions "A.—Disposed of suits", endeavour to ascertain what the decree really was; and, if satisfied as to this, should then admit the appeal. A notice should be issued recommending all parties to proceed at once with their cases, as delay may increase the difficulty of ascertaining what the decrees were; but no absolute limit of time can be prescribed.

*H.—Sales in execution held and earnest money paid.*

(11) If the purchaser can produce the sale notification issued in the mufassil, or in the Collector's office, there can be no difficulty; unless it is alleged that claims by third parties to part of the property had been allowed. On such allegation the matter must be enquired into.

(12) If no specification of the property can be produced, the purchaser must give notice to the decree-holder and debtor that he is about to claim either a certificate of sale, or a refund of the earnest money. If the parties cannot agree as to the property which formed the subject of sale, the Court must decide on such evidence as may be produced, and in the event of its being unable to determine what was sold, the sale cannot be confirmed, and, therefore, the purchase money must be refunded.

## CHAPTER 23

### CLASSIFICATION, PRESERVATION AND DESTRUCTION OF CORRESPONDENCE IN DISTRICT JUDGE'S ENGLISH OFFICE.

**478.** There shall be separate almirahs marked "Current," "Recent" and "Old" to contain correspondence of the current year, the preceeding one, two or three years and of the last twelve years. In the almirahs a convenient number of compartments should be assigned to papers of different departments according to requirement.

**479.** The following classification of papers should be made:—

A	...	...	To be preserved for ever.
B	...	..	To be preserved for 12 years.
C	...	...	To be preserved for 3 years.
D	...	..	To be preserved for 1 year.

All letters and papers should be distinguished as A. B. C. D and marked prominently by the use of A, B, C, D stamps. This should be done at the earliest opportunity.

**480.** At the end of every year, all correspondence and collections of papers should be gone through and carefully examined, in order to prevent the destruction of papers that may be needed for future reference. Of the correspondence which has become 12 years old, that of the A Class should be sent to the record room (*vide* rule 483), the rest being destroyed. "Recent" correspondence three years old (marked A or B) should be transferred to the "Old" correspondence, that marked C being destroyed and "Current" correspondence should be transferred to the "Recent" correspondence, that marked D being destroyed. Destruction must be by fire.

**481.** The following table shows the classification of English correspondence and other English records prescribed in rule 479.

#### Class A.

*Papers to be stamped with the letter A, and to be retained for ever.*

Correspondence of importance regarding:—

Creation, location, abolition of Courts over and jurisdiction of Courts (civil and crim	..	Minutes of inspection of High Court Judges.
Buildings—construction, repair, acquisition	..	General and Special Letters of the High Court.
Escheat—Intestate property	..	All circulars from Government, Accountant General, etc.
Legal Practitioners, Government Pleader and Public Prosecutor—Enquiries.	..	Correspondence on other subjects of impor- tance to be included at District Judge's discretion.
Ministerial officers and Process-serving peons—Appointment, charge, character and work.	..	All old correspondence bound up in books.
Pensions	..	All printed reports and books including regulations and laws.
Wills and Endowments	..	List of papers destroyed

**Class B.**

*Papers to be stamped with the letter B, and to be kept for 12 years.*

Correspondence regarding :—

- |  |   |
|--|---|
| Any of the subjects mentioned under Class A, which is of comparatively small importance and which it is obviously unnecessary to keep beyond twelve years.   | Budgets.  |
|  | Embezzlements.  |
| Securities of officers except those of ministerial officers who are dead and no longer in service, in which case they become C papers, the period of retention being calculated from the date of termination of service. | Stationery, furniture.<br>Indents.<br>Audit reports.  |
| Ministerial officers and process-serving peons—Promotion, increment, dismissal, retirement, extension of services, departmental enquiries, transfer, leave.  | District Judge's Inspection Reports, Consolidated quarterly statements, <i>Calcutta Gazette</i> , Government Price Lists. |
|  | Other correspondence of a miscellaneous nature to be included at the District Judge's discretion.                         |

Matters of account.

**Class C.**

*Papers to be stamped with the letter C, and to be destroyed after three years.*

- |  |   |
|--|---|
| Legal Practitioners—Probationary pleaders, cancelled licenses, commissions, Survey Examination, Mukhtarship Examination. | Indents for forms, stationery, books, furniture.                                  |
| Opinions on Acts, Bills, etc.  | Accountant-General, Bengal's objection statements and explanations thereon.       |
| All monthly, quarterly, half-yearly and annual returns from subordinate Courts.  | Charge letter of judicial officers.   |
| Inspection reports not otherwise provided for.   | Orders about contracts and contingency grants.                                    |
| Circular orders of the High Court.   | All other miscellaneous matters that do not come under the above classifications. |

**Class D.**

*Papers to be stamped with the letter D, and to be destroyed after one year.*

- |   |   |
|---|---|
| All reminders, memoranda and similar unimportant small letters in Classes A, B and C.                 | Other correspondence of a miscellaneous nature to be included at the District Judge's discretion. |
| Mere formal correspondence, acknowledgment of letters, publications and other trivial correspondence. | Applications from ministerial officers.<br>Civil list.  |

**482.** Although according to the lists, papers in Class A are to be kept "for ever," an expression used because it is unsafe to fix any period within which they may be unobjectionably destroyed, it is necessary, in order to prevent the excessive accumulation of papers, to make arrangement for periodically relieving the record room of old papers which are really of no permanent importance or administrative interest. Such a revision should accordingly be made every five years and a report made to the District Judge upon whose authority the superfluous records will then after personal inspection be destroyed.

**483.** At the close of each year, the A Class correspondence (i.e., correspondence to be preserved for quinquennial revision) which has passed out of the category of old correspondence will be transferred to the record room with a flat index board attached in the following form:—

### NAME OF OFFICE.

FILES Nos. 1 to .

A files to be examined every five years.

First examination to be made in 19 .

Date of examination made.	Serial number of files destroyed.	File removed.		
		No.	Where gone.	Date and initial of Mohurrirs.

The issue and the receipt register and the Index register should also be transferred along with the correspondence.

**484.** (1) Before transfer, the office should see that all the serial numbers are on the file and in proper order and that the fly sheet is properly filled up, and that all B papers have been destroyed.

(2) It is duty of the record-keeper to satisfy himself that all "B" papers have been destroyed, that each file has a fly leaf properly filled up and that the papers are arranged in due serial order.

**485.** The record-keeper will then re-tie the bundles keeping the files in numerical order and making the bundles of sufficient depth to fill up the shelf on which they are to be kept altering the number on the index board to agree with files in the bundle. This should be done by writing the new number in bold black ink figures on a slip of White paper and gumming the slip over the old figures. He will hang up a board denoting the year on the shelf on which the bundles of files relating to that year are placed.

**486.** If a document or file is taken out of the bundle for any purpose, a receipt must be obtained for it and put in its proper place on the file to which it belongs or in the bundle of files in proper numerical order.

**487.** A note giving the file number, the name of the officer to whom it has been sent, and the date of sending, should also be made, on the front board in the case of the file being removed. When a file so taken out is returned to the record-keeper, it is to be at once replaced in its proper place in its bundle and the entry in the front board crossed out in ink. If the space on the front board becomes filled up, a piece of white foolscap paper should be pasted over it, and the process above described should be repeated.

**488.** Copies of the *Calcutta Gazette* supplied to District Judges should be bound in yearly volumes, which should be preserved in the record room for 12 years, and sold at the expiry of that period.

**489.** Confidential papers should be classified as follows:—

- (a) Papers (mostly printed) which are confidential in a minor or more or less formal sense, such as confidential circulars issued by various departments of Government, etc.
- (b) Character statements of subordinate officers.
- (c) Papers which are confidential only during the pendency of discussion and not after a decision has been arrived at.
- (d) Papers which are strictly confidential and the demi-official correspondence of heads of the offices with one another.

**490.** Papers falling under heads (a) and (b) of rule 489 should be kept in the office in a box or almirah fitted with a Chubb's lock, the key of which should remain with the confidential clerk when there is one, or the judicial officer, if any, in charge of the English Office, unless for any reason the head of the office thinks it necessary to keep the key himself. They should be entered in a special register, in which should be entered the date of receipt, the number and date of the letter, the subject to which it relates, and the nature of the action taken. When a case is taken out of, or returned to, the almirah or box, a note to that effect should be made in the register. The register should also be under lock and key. When the officer-in-charge of these papers goes on leave or is transferred he should hand over the key to his successor after verifying the contents of the box or almirah in his presence.

**490.** Papers falling under heads (a) and (b) of rule 489 should be kept in a locked box or drawer in the personal custody of the District am over

#### No. 59.

161—

*Renumber the rule immediately preceding Rule 492 as 491 and re and substitute "(c) and (d)" for "(a) and (b)" in line 1 of the rule so stroyed, umbered. ould be*

[No. 59, dated the 27th November, 1963. File No. 4R--34 of 59.]

**493.** ~~The rules in this chapter shall, as far as they may be applicable,~~ be followed in the case of correspondence etc., in the offices of other Judicial Officers.

## **PART IV—Information, Copies and Copying Department**

### **CHAPTER 24**

#### **INFORMATION.**

**494.** Any person may apply for information from the records and registers of any Court.

All applications for information shall be made in the prescribed form No. (M) 55 to the Judge in charge of the District Record Room or some other officer designated by him for the purpose and in the case of records and registers in the office of the different Courts, to the presiding Judges of those Courts, during the first two hours of the Court's daily sitting.

**NOTE.**—Form No. (M) 55.—Applications for information shall be destroyed after 3 months.

**495.** (1) The officer receiving applications shall number them consecutively and enter them, the urgent applications in red ink in the prescribed register [Form No. (R) 24] and the date of receipt shall be noted, or stamped thereon. If the information can be furnished at once, he will note the same on the upper portion of the form in the remark column and make that part over to the applicant, taking the latter's dated receipt in the lower portion which will be retained and recorded in the office.

(2) If the information cannot be furnished at once, he will enter in the fourth column of the Form No. (M) 55 as also in the lower receipt portion the date and, if possible, the hour, by which the information will be furnished. The lower receipt portion will then be torn off and made over to the applicant with a direction to present it on the day and at the hour noted. The upper portion will be immediately passed on to the ministerial officer in immediate charge of the record concerned who shall enter in the remark column the information required and return it to the receiving officer before the time prescribed. The upper portion bearing the information will be made over to the applicant on his reappearance and production of the lower portion which will be retained and recorded in the office after taking his dated receipt on it, as also in the Register of applications for information [Form No. (R) 24].

**NOTE 1.**—The Judge in charge or the presiding officer, as the case may be, will fix the hours within which applicants should reappear for taking delivery of the paper containing the information.

**NOTE 2.**—Each clerk through whose hands an application for information passes shall put his initials and the date and hour of receipt and passing-on by him on the back of the application in the manner indicated in rule 526.

**497.** Information should ordinarily be supplied by forenoon of the next open day after the presentation of the application. Urgent applications should ordinarily be complied with on the day on which they are presented.

**NOTE.**—The Judge in charge or the presiding Judge should see that whenever possible, information capable of being supplied from current records or registers, or records, registers, etc., which can be easily located, is supplied to applicants by 3 p.m. on the day the applications are filed.

**498.** Information requiring anything but short answers shall not be given. If any extract from the record or the substance of any order, etc., or document is desired, the proper course is to apply for a copy.

**499.** Only one application need be made for information required in respect of any number of items taken from the same record or register or in connection with a single cause or matter. When information relating to different matters or causes is wanted, as many applications are necessary, as the matters or causes to which they relate.

**NOTE 1.**—For the meaning of “same register” see explanation to Note 1, rule 514(1)(a), *post*.

**NOTE 2.**—This rule applies equally to applications for copies.

**500.** Defective applications and applications of which the information asked for cannot for any reason be given shall be rejected provided that no application shall be rejected on the ground that the description as given in it is accurate in some respects, if there are means for finding out the right record or register.

**NOTE.**—This rule applies equally to applications for copies.

**501.** Surreptitious or gratuitous supply of information by any ministerial officer is strictly prohibited and considered as a serious offence. No information which has to be applied for under these rules should be supplied unless an application is made in the prescribed form with the usual searching fee and any ministerial officer violating the rule is liable to be severely dealt with. If it is proved to the satisfaction of the Judge in charge or the presiding Judge of the Court concerned that such practices are going on whether responsibility can be fixed on any particular person or not, the head ministerial officer of the department concerned (Sheristadar, record-keeper, nazir, etc.), should be warned that failure to check such abuses will be reckoned as an indication of inefficiency on his part and he is liable to be degraded or otherwise punished.

**NOTE 1.**—The Sheristadar or the record-keeper should see that outsiders do not on any account come into the room where the clerks sit or hold conversation with them.

**NOTE 2.**—The Judge in charge or the presiding Judge, as the case may be, should as frequently as possible inspect the Register of applications for information and initial it with a view to see whether information is being promptly supplied and whether information which is to be applied for on payment of searching fee is being surreptitiously supplied. It is recommended that the Judge should have the information sheets distributed in his presence as often as time permits.



## CHAPTER 25

### COPIES

#### I. Presentation of Application—Who may obtain copies.

**502.** All applications for copies of papers or documents shall be in Form No. (M) 54, Volume II, signed, in each case, by the party requiring the copy or by his pleader or authorised agent and presented to the Judge in charge of the copying department or some other officer designated by him for the purpose during the first two hours of the court's daily sitting, except applications on which expedition fees have been paid, which may be presented at any hour during the court's sitting.

**503.** A plaintiff, or a defendant who has appeared in the suit, is entitled, at any stage of the suit, *before or after decree*, to obtain copies of the record of the suit, including exhibits which have been put in *and finally accepted* by the court as evidence.

**NOTE 1.**—A party who has been ordered to file a written statement is not entitled to inspect or take a copy of a written statement filed by another party until he has filed his own.

**NOTE 2.**—This rule does not prohibit the grant to parties at any stage of uncertified copies of documents produced along with the plaint or under Or. 13, C. P. Code, in cases where they do not wish to take copies themselves under the provisions of Or. 11, r. 15.

**NOTE 3.**—"Suit" in this rule, and in rules 504, 505 and 506 includes execution and miscellaneous cases.

**504.** A stranger to the suit may, *after decree*, obtain, as of course, copies of the plaint, written statements, affidavits, and petitions filed in the suit: and may, for sufficient reason shown to the satisfaction of the court, obtain copies of any such document *before decree*.

**505.** A stranger to the suit may also obtain, as of course, copies of judgments, decrees, or orders at any time after they have been passed or made.

**506.** A stranger to the suit has no right to obtain copies of private documents except with the consent of the person by whom they were produced, or his successor in interest. He may obtain copies of other documents, in which he has an interest, including depositions for *bona fide* use in the courts, and case-maps, at any time after they have been proved or completed.

**507.** Copies of printed or lithographed maps and plans will not ordinarily be supplied by the copying department. Application should be made to the office where the original maps are deposited.

**508.** Whenever applications are made for copies of letters from, or resolutions passed by, the High Court, the applicants should be referred to the High Court. Copies of such documents may not be granted by local authorities.

**509.** Every application for copy shall state whether or not the person applying is a party to the case from the record of which the copy is wanted. If such person is not a party or his pleader, the application shall state the object for which the copy is required.

**510.** Where, in the case of an application, doubts arises as to whether the document of which a copy is applied for is one of which a copy can or ought to be granted, and in all cases where the applicant is not a party to the suit or proceeding, the head comparing clerk shall lay the application before the presiding Judge of the court concerned or the Judge in charge as the case may be, for his orders.

**511.** For copies of more than one document on the same record, one application will be sufficient.

NOTE 1.—See Note 2 to rule 499 *ante*.

NOTE 2.—For the purpose of this rule records called for in connection with an original case or appeal will be treated as part of the record of such case or appeal.

**512.** Subject to the rules above, copies shall not ordinarily be granted of documents which are themselves copies. A copy of a copy is to be granted only when good grounds are shown for not taking it from the original, i.e., for not applying to the office where the original is kept. When copies of copies are granted, it shall be expressly indicated on the copy that it has been copied from a copy and not the original.

**513.** No copy shall ordinarily be given of any part of a document other than a public document. But a person desiring to have copy of a part of a document not being a public document, shall state full reasons thereof in his application and the court may, when the document consists of several distinct or independent parts or for any other sufficient reason permit the granting of a copy of such part.

## 2. Searching-fees and charges for copies.

**514.** The following charges shall be levied for inspection, information and copies:—

Nature of the fee or charge.	Cases in which to be paid.	Amount.	How to be paid.
		Rs. a. p.	
(1) Searching fee	(a) On all applications :—  (i) For information whether the record is deposited in the District Record Room or not.	0 4 0	By a court-fee stamp to be affixed on the application.
	<p><b>Note 1.</b>—This shall be the only fee required on such application. One searching fee only shall be charged for any number of items of information taken from the same record or register and included in the same application.</p>		

Nature of the fee or charge.	Cases in which to be paid.	Amount.	How to be paid.
(1) Searching fee— <i>contd.</i>	<p><i>Explanation :</i></p> <p>"Same register" includes any number of volumes of the same class for any one year but not different classes of registers though of the same year.</p> <p><b>Note 2.</b>—Only one searching fee should be charged in respect of an application for information required in connection with a single cause or matter, even though the search involves reference to several records or registers. A separate application should, however, be required and a separate fee charged in respect of information required in connection with every separate cause or matter.</p> <p><b>Note 3.</b>—See Note 5 to clause (iv), p. 169.</p> <p>(ii) For inspection where the record is deposited in the Record-room.</p> <p><b>Note 1.</b>—No searching fee is to be charged for inspection of records of pending cases by pleaders.</p> <p><b>Note 2.</b>—For fees for inspection of Will, see rule 308.</p> <p>(iii) Expedition fee for urgent applications for inspection and information. •</p> <p>(iv) For copy of all documents certified or uncertified and extracts from registers (in addition to the prescribed fee under Art. 1 (a), Sch. II of the Court-fees Act, 1870,) except such copies as the law requires to be given free of cost.</p>	Rs. a. p.	
		0 4 0	By a court-fee stamp to be affixed on the application.
		1 0 0	Ditto.
		0 4 0	Ditto.

Nature of the fee or charge.	Cases in which to be paid.	Amount.	How to be paid.
(1) Searching fee — <i>contd.</i>	<p><b>Note 1 (a).</b>—No searching fee shall be charged in respect of applications for copies of papers in the records of cases filed within the time specified in rule 395 for transmission of records to the District Record Room. In the case of records of Small Cause Court cases decided by outlying Munsifs, the period of exemption will be the time specified in Rule 472 for the transmission of records of such cases to the Munsif's Record Room at that outlying station.</p> <p>(b) No searching fee shall be charged in respect of copies of papers in the record of the trial court when such record is with the appeal pending against the decision in the original case.</p> <p>(c) No searching fee shall be charged in respect of an application for a copy of any document from the records of a disposed of case and marked as an exhibit in a pending case.</p> <p>(d) No searching fee shall be charged in respect of applications for copies of papers from the records of Execution cases called for from the District Record Room for disposal of applications for delivery of possession under Or. 21, Rule 95 or 96, Civil Procedure Code.</p> <p>(e) No searching fee shall be charged in respect of applications for copies of papers in the records of cases preserved in the Court office in accordance with rule 400 <i>ante</i>.</p> <p><b>Note 2.</b>—One searching fee only shall be charged for any number of copies taken from the same record or register and included in the same application. [For the meaning of "same register", see Note 1 to clause (a), p. 166.]</p>	Rs.   a.   p.	

Nature of the fee or charge.	Cases in which to be paid.	Amount.	How to be paid.
(1) Searching fee— <i>conold.</i>	<p><b>Note 3.</b>—Only one application with a single court-fee stamp under Art. 1 (a), Sch. II of the Court-fees Act, 1870, is necessary when a copy is applied for of any number of documents on the same record; but when copies are required of documents in more than one record, there must be separate application with a separate stamp for each (H. C. Proceedings June, 1881, Nos. 87, 88 and July 1882, Nos. 86, 87.)</p> <p><b>Note 4.</b>—Records called for in connection with original case or appeal will be treated as part of the record of such case or appeal.</p> <p><b>Note 5.</b>—Applications for copies and information will ordinarily be rejected unless the applicants furnish details from which the documents to be copied or papers containing the information can be readily located. If applications are granted without such details being furnished, the Judge in charge or the Presiding Judge, as the case may be, may assess the searching fees at his discretion, regard being had to the time likely to be involved in the search.</p>	Rs. a. p.	
	(v) For sending for a record or document from the High Court, Appellate Side.	1 0 0 in addition to the free prescribed under Art. 1 (a) Sch. II, Court-fees Act.	By means of a court-fee stamp to be sent unpunched to the High Court with the requisition.
	(vi) For sending for documents and the like involving a search in the Collectorate or other revenue offices.	0 4 0	By means of a court-fee stamp to be remitted unpunched by the civil court to the Collector.
	(b) For information in order to remedy defects that may be found in an application where the supply of such information without a separate application for it has been authorised by the High Court ( <i>vide</i> rule 148.)	0 4 0	By a court-fee stamp to be fixed on the application.

Nature of the fee or charge.	Cases in which to be paid.	Amount.	How to be paid.
(2) Copying charges.	(a) Manuscript copies whether certified or uncertified.	<p>Ra. a. p.</p> <p>0 4 0</p> <p>per folio consisting as nearly as possible of 150 words English, or 200 words vernacular, four figures counting as word.</p>	<p>By means of an impressed stamp of 4 annas on each sheet of paper corresponding with the folio to be provided by the applicant for a copy. Each sheet shall contain a folio, that is as nearly as possible 150 words English or 200 words vernacular.</p>
	(b) Typed copies (in English or vernacular), whether certified or uncertified containing :—		<p>Note.—As there are 25 lines in each sheet each line shall contain as nearly as possible 6 words English, or 8 words vernacular.</p>
	(i) 150 words or less ..	0 4 0	By means of an impressed stamped paper of 4 annas.
	(ii) Exceeding 150 words but not exceeding 300 words.	<p>.</p> <p>0 8 0</p>	By means of the same impressed stamp paper of 4 annas, with an adhesive stamp of 4 annas affixed thereto across the perforated line on the top of the sheet of the impressed stamped paper, so that the figure—head may be above the perforated line and that the portion below may clearly show the value.

Nature of the fee or charge.	Cases in which to be paid.	Amount.	How to be paid.
(2 Copying charges, —concl'd.	(iii) Exceeding 300 words	Rs. a. p. ..	By means of an additional impressed stamp paper or papers of 4 annas with an adhesive stamp of 4 annas, affixed there to, if necessary, according to the number of words to be typed.  <b>Note 1.</b> —The adhesive stamp will be supplied loose by the parties and affixed in the copying department according to necessity.  <b>Note 2.</b> —Imposed stamp sheets should never be received and cancelled in lieu of adhesive stamps.  <b>Note 3.</b> —In the case of certified copies, the court fee chargeable under the Court-fees Act, 1870 should be levied by affixing the necessary stamp to the first folio of the copy.
	(c) Expedition fee for urgent application for copy.	1 0 0 extra (or, if the copies exceed four folios, of 4 annas for each folio).	By means of court-fee stamp to be affixed to the application.
	(d) Expedition fee for urgent application for conversion of an uncertified copy into a certified copy.	0 8 0 extra (or, if copies exceed four folios, at the rate of 2 annas for each folio).	By means of court-fee stamp to be affixed to the application.

**515.** (1) In the case of documents, such as *jamabandis*, measurement papers, order-sheets, accounts, registers and others which are not written continuously like a deposition, or which are not written right across the page, every endeavour should be made to write as many as 150 English words or 200 vernacular words on each folio.

(2) If it is found impossible to do this on each folio without distorting the form of the original document, as many additional sheets of plain cartridge paper as may be necessary (to be provided by the applicant for the copy) should be pasted on below, or at the side of the first sheet.

(3) In consideration of the additional time and trouble involved in copying documents of the nature described above, an additional charge may be levied from the applicants according to the following scale:—In all cases requiring more than three folios, one additional folio may be taken for every four folios, that is to say, one additional folio may be taken in cases requiring four to seven folios, two additional folios in cases requiring eight to eleven folios, three additional folios in cases requiring twelve to fifteen folios, and so on. No additional charge should be levied in cases which require from one to three folios.

**516.** No fees are to be demanded or paid for searching for or copying or typing papers required by public officers for public purposes. In such cases the copies are to be made on plain paper by the salaried establishment.

NOTE 1.—The exemption from fees for searching for or copying of papers required by public officers for public purposes extends also to papers required by public officers in Burma.

NOTE 2.—Local bodies and managers under the Court of Wards are not to be treated as public officers for the purpose of this rule.

**517.** In the case of maps and plans no general rule can be laid down. In each case a reasonable charge shall be fixed by the Judge in charge of the copying department with reference to the skill required, the difficulty or intricacy of the work and the time that it may occupy. Two thirds of the amount will be paid to the mappists and will include the cost of materials; and the remainder will be credited to Government on account of examination fees.

NOTE 1.—Materials include tracing cloth, drawing instruments, paints, pencils, brushes, pins, etc. They are to be supplied by the mappists themselves and no charge for these articles is to be levied from the parties. Ink only is to be supplied from the office.

NOTE 2.—The charges for copying maps and plans should be realised in court-fee stamps, as in the case of ordinary copies of documents, and the procedure followed in remunerating mappists should be identical with that prescribed for the payment of typists and copyists.

**518.** Uncertified copy may be converted into certified copy after comparison with the original, upon the application of any one producing it and upon his filing with such application the necessary court-fee stamps required by law; provided he is not debarred under the rules from getting a certified copy and the document is produced in its original state.

NOTE 1.—An uncertified copy obtained from the copying department at one station may be converted into a certified copy by the copying department at another station; provided the original is at the latter station when the copy is required to be certified.

NOTE 2.—Copies with notes written on them or portions marked or underlined shall not be accepted for conversion into certified copy.

NOTE 3.—If the original has been amended or added to or if any order has been endorsed on it after issue of uncertified copy, the uncertified copy cannot be converted into certified copy.



**519.** Authenticated copies of maps or plans even if they contain words are chargeable with a duty under Art. 24 of Sch. I of the Indian Stamp Act II of 1899, such duty being leviable in addition to and irrespective of the cost of preparation of the maps or plans. The stamp duty payable under the above article for copies of maps or plans certified to be true copies shall be denoted by means of an adhesive court-fee stamp.

**520.** For the cancellation of court-fee stamps on copies, reference should be made to rule 592, and paragraph III of the Circular of the Board of Revenue reproduced as Appendix II to Chapter 27.

**521.** If in a private case, the photographic enlargement of a finger print is entrusted to the Finger Print Bureau of the Criminal Investigation Department, a charge of Rs. 5 for each of the first three enlargements and of Rs. 2 for each additional print shall be realised from the party concerned. The amount so realised shall be credited in full into the treasury by the Court concerned, [*vide* Note 8(a) to Rule 643(A) *post*].

**522.** The following fees shall be charged when a lower Court or a party to any suit or appeal or his pleader or advocate requires a document to be translated by a salaried Translator of the High Court:—

Rs. a. p.

One anna for every 3 words for documents written in a language other than the vernaculars of Bengal and Assam, and for every 5 words for other documents (three figures being counted as one word) subject to a minimum charge of ... 2 0 0

If the translation be required within a specified time and the work cannot be done during office hours without detriment to the current work of the High Court, and it has to be done out of office hours, an additional fee calculated at one anna for every 6 words for documents written in a language other than the vernaculars of Bengal and Assam and for every 9 words for other documents shall be charged for payment to the Translator, subject to a minimum charge of ... 1 0 0

### 3. Preparation and Issue of Copies.

**523.** Immediately on receipt of the application, the officer who receives it shall examine it and satisfy himself that it is in order and in accordance with the rules. He shall then sign it and pass it on, on the day of receipt, to the head comparing clerk in the copying department.

**524.** On receipt of each application [Form No. (M) 54], the head comparing clerk shall give it a serial (consecutive) number, stamp or note legibly the date of receipt on the top right hand corner and enter it in the "Register of applications for copies" [Form No. (R) 23, Volume II], filling up accurately as many columns as can be filled up then. If it is possible at once to inform the applicant what court-fee stamps and folios will be required, and if stamps and folios have not been filed with the application, the head comparing clerk should note the requisite information on the back of the receipt portion and return it to the applicant. If the requisite stamps and folios have been filed with the application, the document or copy required to be copied shall be at once sent by the office with the application to the copying department. If the information cannot be given at once, the date on which the applicant is required to attend for the estimate should be entered in the counterfoil and also on the top of the application for future reference. The head comparing clerk shall, at the

time of returning the counterfoil to the applicant, inform him that his application will not be considered complete and that the preparation of the copy will not be commenced until he has supplied in full the court-fee stamps and the necessary number of folios.

**NOTE.**—The entries in the different columns of Register No. (R) 23 as required by this and other rules in this Chapter must be made by the head comparing clerk contemporaneously with the various stages through which the application for copy passes before its preparation and delivery.

**525.** (1) After entering the application in the prescribed register the head comparing clerk shall at once, if possible, or during the same day but not later than the following day, ascertain the amount of court-fee stamps payable for the copy applied for and the number of folios required for its preparation.

(2) For this purpose the head comparing clerk shall forward the application by one of the copyists to the officer in whose custody the record is, who will at once not legibly or stamp thereon the name of his department and court, the date of receipt, signing his initials thereunder and enter it in a register to be kept in Form No. (R) 28, Volume II. He will refer to the document or record and with the assistance of the copyist or typist conveying the application carefully estimate so as to obviate the necessity of requiring additional folios to be filed, the number of folios required for each document of which a copy is required. He shall then enter the amount of court-fee stamps and the number of folios required in the space provided for the purpose on the application, sign and date it and return the completed application by the copyist or typist to the head comparing clerk. The document or record shall be kept in readiness for delivery to the copying department as soon as it is sent for for preparing the copy. If the document cannot be traced, the application should be so endorsed and the endorsement signed and dated.

**NOTE 1.**—This rule is not intended to allow copyists or typists the right of entry to record room, and they must in all circumstances be excluded therefrom. If the record from which copies are required is in the record room, the copyist should be shown the record in the Record-keeper's office, and should not be permitted to handle it himself more than is necessary to enable him to assist in making the computation provided for in this rule.

**NOTE 2.**—Where an office peon is provided for the Copying Department, applications for copies may be sent through the office peon to the officer in whose custody the record is. That officer shall have the record in readiness. A copyist shall be sent subsequently to collect the applications who shall assist the officer in making the estimate of stamps and folios.

**526.** Each clerk through whose hands an application for copies passes, shall put his initials and the date and hour of receipt and passing-on by him on the back of the application, in the space provided for the purpose and shall mention in the endorsement the name of the officer to whom he delivers such application. These entries should be made one below the other and must be legibly written. Each clerk receiving an application shall at once comply with the requisitions or pass it on to another who can do so.

**NOTE 1.**—No application for copies shall be returned or rejected on the ground that the description as given in it is inaccurate in some respects, if there are means for finding out the right record. (See also Note to rule 500).

**NOTE 2.**—There should be no unnecessary delay in complying with the requisitions of the copying department.

**527.** Applications for copies should ordinarily be returned on the same day, and never later than the following day to the head comparing clerk with the report required by the rules above.

**527A.** On receipt of the necessary report under rule 525, the head comparing clerk shall at once fill up the appropriate columns of the Register in Form No. (R) 23, Volume II, and estimate the number of impressed stamped sheets and court-fees required and note them in the middle portion of the application, and unless these have already been filed, shall notify the estimate to the applicant when he attends for it. The fact that the estimate has been notified and the date shall be entered in the appropriate place provided for the purpose in the application and the applicant shall be required to sign this entry. If he does not attend for estimate, within 3 days from the date noted in the counterfoil, his application shall be rejected and a note to that effect shall be made in Register No. (R) 23.

**528.** If the requisite stamps and folios are not filed within three days of the notification in the prescribed manner, the application shall be rejected and a note to that effect shall be made in Register No. (R) 23. The person going round the offices to make estimates shall take with him the rejected applications and show them to the record-keeper or other officers concerned who shall sign the applications on the reverse and after restoring the documents or records to the proper places make the appropriate entries in columns 8, 9 and 10 of (R) 28.

**NOTE.**—Whenever an application is rejected after being presented, brief reasons for doing so and the date should be noted in the appropriate column of the Register of applications for copies.

**529.** If an application has been rejected and the copy is still required, a fresh application must be filed and dealt with in the manner prescribed by these rules, as though the original application had not been made.

**530.** When the stamps and folios are filed, a note to that effect and the date shall be entered in the place provided in the application for the purpose and the applicant shall be required to sign this entry. The applicant shall, at the same time, present the counterfoil of his application, which had been returned to him, and a memorandum shall be made thereon stating the date and hour when the copy will be ready. A corresponding note shall be made in the appropriate column of the application form. The applicant shall retain the counterfoil, and it shall be his duty to attend on the date fixed for the purpose of receiving the copy.

**531.** (1) After making the proper entries in columns 9, 12, 13 and 14 of Register No. (R) 23 the head comparing clerk shall take the application or forward it by a copyist to the proper officer having custody of the record with an endorsement requiring him to make over the necessary document or record. Such officer shall immediately hand over the original record or document with the application noting thereon the fact of compliance and date and the head comparing clerk or the copyist receiving it shall sign and date, column 7 in Register No. (R) 28. The head comparing clerk will then at once make the necessary entry in column 11 of Register No. (R) 23.

(2) The person going round the offices to bring the original record or document under this rule shall take with him original documents or records of which copies are ready and return them to the proper officers who will make the necessary entries in columns 8 and 9 of (R) 28.

**NOTE 1.**—Only those papers of the record of which copies are actually required are to be sent to the copying department and in every case a removal slip shall be inserted in their place as laid down in Rule 440.

**NOTE 2.**—The person having custody of the record or document shall send it to copying department immediately on receipt of the requisition and there shall be no unnecessary delay. Cases of delay or negligence shall be brought to the notice of the Judge in charge by the head comparing clerk.

Immediately on receipt of the original papers, the head comparing clerk shall make them over to one of the copyists for the preparation of the copy and enter his name in the appropriate column of (R) 23.

**NOTE.**—The copyists must not start making copies before the requisite folios and stamps are realised in full.

**533.** Every copy of a deposition, judgment, decree, order, report, or other documents shall show in the margin, at the proper places the page numbers of the original within brackets.

**534.** Every copy of a judgment or order shall commence with a heading containing the name of the court and the name and official designation of the presiding Judge.

**535.** The head comparing clerk shall so distribute the work amongst the copyists that no copyist has more than one day's work in his possession at one time.

**536.** Every application for copies of depositions in a case which is being heard shall be laid before the trial Judge for such orders as he in his discretion may make. If such Judge so directs, so much of the deposition shall each day be given to the head comparing clerk as there is a reasonable hope of being copied in the course of the day. The head comparing clerk shall return the portion to the Judge at the close of the day.

**537.** If and when it is ascertained that extra court-fees or extra folios are required for copies, the applicant should be informed of the amount of such court-fees or folios when he attends on the date on which the copy was originally notified to be ready, if it is not possible to inform him earlier. When the extra court-fees or extra folios are filed, the procedure laid down in rule 530 in so far as it is applicable shall be followed. If the extra court-fees or extra folios are not filed within three days from the date on which the copy was originally notified to be ready, the application shall be rejected. When an application is so rejected, the fact should be noted in Register No. (R) 23 and the original documents and records brought for the purpose of preparation of copies shall be returned to the proper officers who will make the necessary entries in the appropriate columns of (R) 28.

**NOTE.**—Every date on which extra folios are called for shall be shown after the copy is prepared in the proper space at the back of the folio.

**538.** When the applicant complies with rule 537, a note should be made on the application in the proper place showing the date and number of extra folios and the date and number and the value of the extra court-fees filed. This note shall be signed both by the applicant and by the comparing clerk who receives them, and columns 12, 13 and 14 of Register No. (R) 23 should at once be filled up.

**539.** A similar procedure should be followed with regard to the number and amount of court-fee stamps for certified copies, column 25 of Register No. (R) 23 being filled up.

**540.** Every copyist or typist shall note the number of words written or typed by him on the back of each sheet, so that the head comparing clerk or the certifying officer who shall frequently check these entries and initial when checked, may be enabled to verify that more folios than are really necessary have not been used and that the stamp affixed in the case of certified copies is correct.

**541.** Every copy must bear the signature of the copyist making it and the date on which the copy was completed. It must also bear the signature of the clerk who examined the copy and the date on which such copy was examined.

**NOTE.**—Each page must be signed at foot by the copyist or typist.

**542.** In ordinary circumstances a copy shall be furnished not later than 12-30 p.m. or 8 a.m., as the case may be, of the fifth open day after the necessary court-fee stamps and folios have been put in.

**543.** When an "Urgent" copy is required, the extra fees prescribed in rule 514(2) (c) shall be levied and column 24 of Register No. (R) 23 filled up.

**NOTE.**—Applications for "Urgent" copies should be entered in red ink.

**544.** Urgent copies should be furnished on the day of the application, if possible, but not later than the following day. Care, however is to be taken that other applicants for copies do not suffer materially by this arrangement. If the granting of other copies is likely to be much delayed, an extra copyist, when available, may be temporarily appointed by the Judge in charge for the number of days actually necessary.

**NOTE 1.**—No application is complete until the necessary stamps and folios have been filed. When these are not filed with the application, the periods referred to in this rule and in rule 542 will be reckoned from the date of their being filed.

**NOTE 2.**—If sufficient stamps and folios to cover the full charge of an urgent copy are not filed with the application, the estimate of the deficit in respect thereof shall at once be personally communicated to the applicant and the fact will be noted on the application and signed with date by the applicant. Where the applicant cannot be found, the procedure laid down in rule 537 will be followed.

**545.** All copies, whether certified or uncertified, must be carefully examined before issue by a salaried officer and should be absolutely free from error. The Judge in charge should, from time to time, examine the copies prepared.

**NOTE.**—The duty of examining copies should, as a rule, be entrusted to the comparing or examining clerks, or if there are none in the office, to the head clerk or seniormost clerk, or sheristadar. The copyists and typists must not be allowed to examine for each other.

**546.** The practice of making erasures by removing (*i.e.*, scratching out or otherwise effacing) words written or typed by mistake is strictly prohibited in regard to all copies. Instead of erasing the incorrect word, the word is simply to be struck through with one line by the pen and the correct word written above the word so struck through.

**547.** In the event of any copy being found to be unfit for issue by reason that it—

- (i) has not been clearly, legibly or neatly written or typed and with proper ink;
- (ii) is not in the prescribed form;
- (iii) is so incorrect that revision has rendered it unfit for issue;
- (iv) does not conform to the rules and orders of the High Court, or
- (v) is otherwise incomplete, defective or open to objection;

the examining or certifying officer shall report the matter to the Judge in charge of the copying department who will cancel the copy and require the copyist or typist to make a fresh copy at his own cost.

**NOTE.**—All copies, whether granted free of cost or on payment, should be written legibly with good ink.

**548.** (1) All certified copies furnished by the court shall be certified to be true copies and shall be sealed with the seal of the court. The

certifying officer shall see that all alterations and interlineations in the copy have been initialled by the comparing clerk and that the number of alterations and interlineations has been stated in the copy.

**NOTE 1.**—Name in full must be written in own handwriting and facsimile stamp must not be used.

**NOTE 2.**—The words "Certified to be a true copy. Authorised under section 76, Act I of 1872" may be impressed by means of a stamp.

**NOTE 3.**—Certified copies cannot be signed "for" the head of a court or office. The officer authorised must certify the copy as true in his own name and with a statement of his official title as required by section 76, Evidence Act, and the Explanation thereto.

(2) All certified copies must be signed, if not by the Judge in charge, then by the officer hereinafter mentioned:—

*At the headquarters of a district.*—By such officer as may be appointed by the Judge in charge with the approval of the District Judge.

*At out-stations.*—By the sheristadar of the Judge in charge.

*In Courts of Small Causes constituted under Act IX of 1887.*—By the head clerk.

**NOTE 1.**—The above certificate shall not be given on a blank sheet. If the last folio has been fully exhausted by the copy, the certificate may be given on its reverse.

**NOTE 2.**—Uncertified copies should only be marked as "examined" and initialled by the Examiner. For the conversion of uncertified into certified copies, see rule 518.

**549.** The officer certifying the copy shall in each case satisfy himself that the folios purporting to have been used in the preparation of the copy correspond with the number actually necessary under the rules and verify the correctness of the stamp affixed. He should also check the entries in the Register of Applications in Form (R) 23 regarding the number of folios filed and used and see that the unused folios (if any) are attached to the copy and that correct details regarding the number of unused folios are entered on the back of the application Form (M) 54.

**550.** When a copy is granted, the following particulars must invariably be recorded on the copy itself, and in the form given below:—

Date of application for the copy.....	..
Date fixed for notifying the requisite number of folios and stamps .....	.....
Date of delivery of the requisite folios and stamps .....	.....
Date on which the copy was ready for delivery .....	.....
Date of making over the copy to the applicant .....	.....
Cost of copy .....	.....

**NOTE 1.**—Each date on which extra folios are to be notified and each date on which they are delivered shall also be recorded.

**NOTE 2.**—The date on which a copy is ready for delivery is not necessarily the date on which it is certified. If it is certified at such a late hour that it cannot be made over to the applicant on that same day, the following day is to be considered as the date on which it is ready for delivery.

**551.** In the case of a copy of a judgment, decree or order, the dates excepting the date of making over the copy to the applicant, shall also be expressed in words.

**552.** When an uncertified copy is, under rule 518, converted into a certified copy, the costs of such copy and certification shall be recorded in the particulars required by rule 550 above.

**553.** Care will be taken to have the copy ready in each case by the time fixed. The head comparing clerk will be held personally responsible that all originals are returned and a receipt for them obtained on the back of the application in form No. (M) 54 from the record room or court concerned on the day the copy is ready for delivery.

**554.** In districts where it is not possible for the head comparing clerk personally to perform all the duties under this Chapter, which have been allotted to him, they may be performed by another clerk who will work under the immediate supervision of the head comparing clerk, but the latter will be responsible for the proper performance of the duties in question.

**555.** As the copies required under each application are completed, they shall be made over together with all unused folios to the head comparing clerk, who shall attach the copies and all unused folios to the original application and note on the application the stamps and folios used.

**556.** The head comparing clerk will be responsible for all records and documents until they are returned.

**557.** The copies and any unused folios shall be delivered to the applicants between the hours of 2-30 and 4-30 o'clock in the afternoon and 10 and 11 o'clock in the case of morning sittings.

**NOTE.**—Distribution of copies and return of unused folios and stamps should as far as possible, take place in the presence of the Judge in charge, who may for the purpose fix any hour of the day convenient to him

**558.** On the original applicant's appearing with and handing over the counterfoil, the head comparing clerk will make over to him the copy and unused folios after taking the applicant's signature and date on the reverse of the application; at the same time column 28 of that register must be filled in.

**559.** (1) Should the applicant, in any case, fail to appear to claim either the copy or the unused folios (if any) before the last day of the month succeeding that on which the copy was ready for delivery, or should he fail to put in the extra court-fees or extra folios, where necessary, within the period prescribed in rule 537, such copy and unused folios shall be destroyed in the presence of the Judge in charge. The fact of destruction and the number of unused folios thus destroyed shall be noted in the remarks column of Register No. (R) 23.

(2) In any case in which copy is refused or cannot be granted, the folios and stamps supplied by the applicant should be returned to him when he is so informed. This should be done also where the application is withdrawn and the folios and stamps have not been used. Such stamps would not include searching fee and expedition fee affixed to the application.

**560.** Applications for copies which have been complied with shall be recorded in the copying department and filed in the order of their admission in a separate series for each month. At the close of each quarter they will be examined by the sheristadar, who will bring to notice any irregularity or unpunctuality that may be apparent in the department. The Judge in charge after satisfying himself as to the working of the office by an inspection of the forms recorded, will then direct their destruction.

561. (1) The Judge in charge of the copying department shall keep a list of all copyists and typists employed in the office in the following form:—

*List of copyists and typists showing total remuneration drawn by each month by month.*

Names of copyists or typists.	Total earnings.												
	April.	May.	June.	July.	August.	September.	October.	November.	December.	January.	February.	March.	Monthly average.

(2) From this list, which must be filled up carefully each month, the Judge in charge will be able to detect cases where copyists and typists are receiving an excessive share of the remunerative work, or are not doing a sufficient amount of work, and will take steps to equalise earnings or to dispense with the services of those copyists who are in excess of requirements or habitually fail for insufficient reasons to earn an adequate income.



## CHAPTER 26

### COPYING DEPARTMENT AND COPYISTS AND TYPISTS.

**562.** At stations where there are more courts than one, there shall be but one amalgamated copying department. Of this department such judicial officer as the District Judge may nominate will be in charge, and the clerk appointed to be the chief examiner (otherwise known as head comparing clerk) will be the chief ministerial officer.

**NOTE.**—This rule does not apply to Small Cause Courts. (H. C. Proceedings for November 1884, No. 549.)

**563.** The copying department shall have as many copyists or typists as may be required for the purpose of supplying all applicants with copies ordinarily within the time allowed by rules 542 and 544 *ante*.

**564.** No one but a licensed copyist or licensed typist is to be employed in the preparation of copies. Typists proficient in both English and vernacular typing and providing their own typewriting machines in English or vernacular should be given preference when fresh appointments are made.

**565.** (1) Copies of English documents shall invariably be typewritten and in making new appointments, no one except a typist shall be appointed.

(2) No person shall be employed for copying vernacular documents who is unable to copy both English and vernacular efficiently, legibly and with reasonable despatch and preference shall invariably be given to typists.

(3) Services of copyists and typists whose work is inaccurate or in other respects unsatisfactory on account of old age or other reasons should be dispensed with, and in any case no copyist and typist shall be retained in service after the age of sixty years. [See also, rule 561 (2).]

**566.** The number of licensed copyists must not be greater than will admit, under ordinary circumstances, of each copyist who is not a typist earning an average sum of at least Rs. 60 and of each typist earning an average sum of at least Rs. 90 per month. If the average earnings fall below this standard, steps should be taken to reduce the establishment by making no new appointments until that standard is reached. No new appointment should be made if such appointments would reduce the average earnings below the minimum.

**NOTE.**—No new appointment should be made until the average earnings have reached the standard laid down above without the approval of the High Court being previously obtained (excepting the taking in to cope with sudden increase of work, of temporary hands, who should be discharged immediately the pressure is over). When applying to the High Court for an appointment, details of present earnings and other necessary data should be furnished.

[This rule does not apply to Cooch Behar.]

**567.** Where the court is not provided with salaried typist, every licensed copyist or typist is liable to be called upon to perform such unremunerated work as the presiding officer of the court may require of the department.

**NOTE 1.**—Unremunerated work should not be given to copyists and typists as a rule. If given in emergencies, it should never be more than what will occupy only a short time where there is sufficient remunerated work to keep them engaged.

**NOTE 2.**—Judgments for appellants in jail should not be made over to typists for copy.

**568.** The Registers of application for copies and information shall be placed every day before the Judge in charge, who should sign the last entry after scrutiny.

**569.** The head comparing clerk shall be responsible that the work of copying is distributed as equally and fairly as possible subject to such direction as may be given by the Judge in charge. Work shall be so distributed that no copyist has more than one day's work in his possession at one time. To ensure copies being fully and legibly written or typed, no copyist or typist should be given more work than he is capable of performing efficiently.

**570.** All undistributed work should be kept under lock and key in the possession of the head comparing clerk and arranged in the serial order of the applications relating thereto.

**571.** At the close of each day all original papers and all copies made during the day if not delivered to the parties, as well as all stamp papers not yet used for copies, shall be taken back from the copyists and typists and secured for the night under lock and key in the almirah allotted to the head comparing clerk. Care should be taken to see that nothing remains with the copyists and typists.

NOTE 1.—The Judge in charge should satisfy himself from time to time that this rule is being strictly followed every day.

NOTE 2.—Separate space in the compartments of the almirah should be allotted to each copyist and the papers taken back from the copyists should be kept in the spaces assigned to them.

**572.** Surreptitious supply of information or copies by copyists and typists is strictly forbidden and any copyist or typist furnishing such information or copies is liable to be dismissed. The head comparing clerk will be held responsible for any such abuse discovered in the copying department.

NOTE.—The head comparing clerk should from time to time go round the place where the copyists sit and see that outsiders are not permitted to enter the room.

**573.** No carbon papers shall be allowed to be used in the copying department without the permission of the Judge in charge and such papers found in the possession of typists and copyists will be forfeited. If use of carbon paper be necessary, the head comparing clerk will issue the carbon to the typist and withdraw it after the copies are made.

**574.** If any material error or omission is detected in a copy by the person to whom it has been supplied or by any court before which it is filed for use, it should be promptly brought to the notice of the Judge in charge of the copying department.

NOTE 1.—Errors in copies brought to the notice of the Judge in charge should be corrected after comparison with the original and initialled.

NOTE 2.—The Judge in charge should take such disciplinary action as he thinks proper against the examiner and/or the copyist responsible for the copy. The responsibility for incorrect copies is also shared by the officer who certifies the copy to be correct.

**575.** Typewriters should give clear and easily legible impressions. Typists using old typewriters with worn out types which give indistinct impressions with irregular spacing of letters or words should be made to replace them by better machines.

**576.** When any application is made for the copy of a document in a language or character with which no copyist on the court's establishment is acquainted, the Judge in charge shall arrange, if possible, for a copy to be made thereof and compared with the original by such persons acquainted with the aforesaid language or character as are forthcoming and may in his opinion be relied upon for the purpose.

**577.** Half of the charge of 4 annas per folio, levied by means of impressed and adhesive stamps [see rule 514 (2)] represents the payment to Government, on account of the salary of examiners, and cost of materials, and the remaining half will represent the earnings of the licensed copyists or typists whose accounts will be made up monthly, and the amount due to each paid out of contingencies. These payments must be checked at the time with the upper part of each stamp, which, when the copy is ready, must be torn off each sheet, along the perforated line, and then endorsed with the copyist's or typist's name and the serial number of the application, and kept till the end of the month. Care must be taken to see that nothing in excess of half of the amount realised in stamps is paid away.

**NOTE 1.**—Folio heads must not be torn off and billed for before the copies are actually ready for delivery. Folio heads which can be allowed to be detached should be marked with a date-stamp before they are torn off by the copyists and typists.

**NOTE 2.**—The copyist or typist is paid by the folio; he should get his remuneration according to the number of folios copied, whether the copies are subsequently taken out or not.

**NOTE 3.**—The number and value of the folios of copies delivered or ready for delivery up to the last date of the month as per Register of applications for copies should be totalled up at the close of every month and checked against the bills submitted by the copyists and typists, in order to see whether the two agree. Folios supplied during the month in respect of applications for copies which are not ready for delivery by the last date of the month, should be carried over in red ink to the beginning of the next month's page of the register, or the serial numbers of such items should be marked in red ink with a note in the remarks column in the same ink showing the unused folios and the month in which they are to be billed when copies are ready.

**NOTE 4.**—The different columns for folios and stamps in the register should be carefully filled in at the proper stages indicated in the rules and a cross mark put into the columns remaining blank, all corrections being attested with dated initials. All the columns showing folios and stamps supplied, used and returned unused should be totalled up each month and it should be seen that the total number of folios supplied agree with those used and unused.

**NOTE 5.**—Expedition fees [rule 514(2)(c)] are for credit to Government and no part of them is payable to the copyists or typists. Expedition fees should be entered in column 3 of Annual Statement I, Part III, Form (S) 10, Volume II.

**578.** To prevent the risk of stamp slips being used more than once, the officer passing a copyist's or typist's account will, after checking it as directed, have the slips torn to pieces and cause them to be burnt in his presence. A certificate that this has been done must be attached to the bill on which the copyist's or typist's fees are drawn.

**579.** To protect the interests of Government, care must be taken to see that all copies issued from the court are prepared on the prescribed stamp paper; they must be written or typed on one side of the sheet only, and must not contain more than the authorised number of words. On the other hand, care must be taken to see that applicants are not imposed upon by the copyists or typists spreading their writing or typing over a larger number of sheets than is necessary. By insisting on the number of the lines in each sheet, or space being uniform, control may easily be exercised in this matter, the number of words in a few of the lines in each folio being frequently checked by the head comparing clerk or the officer certifying the copy. The Judge in charge should also from time to time check at random and see that each sheet does not contain more or less than the authorised number of words.

**NOTE.**—It is the duty of each copyist to copy as nearly as possible 150 English words or 200 vernacular words (i.e., one folio), and of each typist to type 300 English or vernacular words (i.e., two folios of 150 words each) on each stamped sheet. Copyists and typists violating this rule is liable to be called upon to compensate the applicant for the loss sustained by him, and if their fault is systematic, to dismissal.

**PART V—Fees and Costs including Rules and Orders  
under the Court-fees and Stamp Acts.**

## CHAPTER 27

**RULES UNDER THE COURT-FEES ACT RELATING TO FEES  
CHARGEABLE FOR SERVING AND EXECUTING PROCESSES,  
REMISSIONS, CANCELLATION OF STAMPS, ETC., ETC.**

## 1. Process Fees.

**580.** The fees in the following schedule framed by the High Court under sec. 20 of the Court-fees Act, 1870, shall be charged for serving and executing processes issued by all Civil and Revenue Courts in West Bengal within the High Court's Appellate Jurisdiction:—

[illegible]

Nature of process.	Amount leviable in—								
	(1) In Courts of District Judges. (2) In Courts of Subordinate Judges. (3) In Courts of Munsifs and Revenue Courts, where the suit in which process is issued is valued at Rs. 1,000 and over.			In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued is valued at Rs. 50 and over but less than Rs. 1,000.			In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit is less than Rs. 50 in value.		
1	2			3			4		
	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
<b>Note 4.</b> —A single process-fee may be accepted in analogous cases for service on those defendants/respondants, who are indetical and can be served simultaneously.									
<i>Article 2.</i>									
In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required, when the number of such persons is not more than four, <i>one fee</i> .	2	0	0	1	0	0	..		
When there are more than four such persons, then the fees abovementioned for the first four, and an additional fee as mentioned in the table for every one in excess of that number.	0	8	0	0	4	0	..		
In every case falling within column 4 in which personal or substituted service of any process on any persons who are not parties is required, for each person to be served.	..			..			0	4	0
<b>Note.</b> —No process-fee is chargeable for summonses on witnesses made over for service to the party applying therefor under Or. 16, r. 7A,—(i), C. P. Code (G. L. No. 7 of 1929).									
<i>Article 3.</i>									
When process of attachment of property by actual seizure is issued—									
(a) for the seizure under the order of attachment	2	0	0	1	0	0	0	8	0
(b) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession, <i>per diem</i> (See, Note 1.).	0	8	0	0	8	0	0	8	0
<i>Article 4.</i>									
For the proclamation and publication of any order or prohibition under Order 21, r. 54, C. P. Code, irrespective of the number of such proclamations or publications.	2	0	0	1	0	0	1	0	0
<i>Article 5.</i>									
For the publication by posting up of a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this table, irrespective of the number of such publications.	2	0	0	1	0	0	1	0	0

Nature of process.	Amount leviable in—								
	(1) In Courts of District Judges. (2) In Courts of Subordinate Judges. (3) In Courts of Munsifs and Revenue Courts, where the suit in which process is issued is valued at Rs. 1,000 and over.			In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued is valued at Rs. 50 and over but less than Rs. 1,000.			In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit is less than Rs. 50 in value.		
1	2			3			4		
	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
<i>Article 6.</i>									
For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment.	10	0	0	4	0	0	1	0	0
<i>Article 7.</i>									
When an order for the sale of property is issued :—									
(a) for proclaiming the order of sale under Order 21, r. 66, C. P. Code, a fee of :	2	0	0	1	0	0	1	0	0
(b) for selling the property, a percentage or poundage on the gross amount realised by the sale, up to Rs. 1,000 at the rate of :	2	0	0	2	0	0	2	0	0
	Per cent.			Prer cent.			Per cent.		
together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of : (See, Note 2).	1	0	0	1	0	0	1	0	0
	Per cent.			Per cent.			Per cent.		
<i>Article 8.</i>									
For service of the combined order of attachment and proclamation of sale prescribed under section 163(1) of the B. T. Act.	2	0	0	1	0	0	1	0	0
<i>Article 9.</i>									
For service of any notice, proclamation, injunction or order and every process not specified in any preceding article, where not more than four persons are to be served with the same document, <i>one fee.</i>	2	0	0	1	0	0	1	0	0
When such persons are more than four in number, then the fee abovementioned and an additional fee as mentioned in the table for every such person in excess of four.	0	8	0	0	4	0	0	4	0

**Note 1.**—(i) When process of attachment mentioned in Article 3 is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the men actually employed.

(ii) The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Court shall order, and the number of days required for the coming and going of the officer ; but where the officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer going, effecting the attachment and returning :

Provided that, if it appears that for any reason the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary and the additional fees in respect thereof shall be paid in advance according to the rate specified in Article 8(b) above. If such additional fees be not paid within the period in respect of which fees have already been paid before the attachment shall cease on the expiry of the period.

(iii) When an application is made for the refund of custody fee, a report is to be called for from the Nazir showing the number of days spent for the coming and going of the officer, or when the officer was not left in possession, the time occupied by the officer going, effecting the attachment and returning. The balance of the custody fee, if any, after deducting the amount incurred as above, will be available for refund.

**Note 2.**—(i) The fee under clause (a) of Article 7 must be paid when the process is obtained.

(ii) The percentage or poundage fee under clause (b) of Article 7 must be paid in court-fee stamps by the auction-purchaser (decree-holder or other person) as soon as his bid is accepted by the Court and the sale is completed.

Provided that the poundage fee may be deducted from the earnest money or the purchase money, as the case may be, by the auction purchaser, not being the execution creditor, before depositing the latter in Court.

(iii) The percentage leviable under clause (b) of Article 7 shall be calculated according to the following scale:—

One anna per Rupee ignoring fractions up to—Rs. 8,

For sums over Rs. 8 and up to Rs. 37-8—8 annas,

For sums over Rs. 37-8 and up to Rs. 62-8—Re. 1,

For sums over Rs. 62-8 and up to Rs. 87-8—Re. 1-8,

and so on for the proceeds realised by the sale up to Rs. 987-8. For sums over Rs. 987-8 and up to Rs. 1,000 the fee shall be Rs. 20. If the proceeds of the sale exceed Rs. 1,000, a fee of Rs. 20 plus 4 annas for every Rs. 25 or part thereof of the amount in excess of Rs. 1,000 shall be levied.

(iv) In cases in which several properties at a sale in satisfaction of a decree are purchased by one person or jointly by a set of persons, only one poundage fee calculated according to the scale prescribed in clause (iii) above, should be levied. But if the properties are purchased severally or in lots by different purchasers, the poundage fee shall be levied, according to the prescribed scale, on the total value of the properties bought by each purchaser.

(Illustration: If 11 properties are sold, 5 to A, 5 to B and 1 to C, the poundage fee should be calculated for A's group on the total value of the 5 properties bought by him and similarly for B. The poundage fee on C's purchase would be calculated on the value of the single property purchased by him).

**Note 3.**—For processes applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

**Note 4.**—Process fees for the service of notices under section 167 of the Bengal Tenancy Act should be assessed in accordance with the scale prescribed above.

**581.** Notwithstanding rule 580, fees for processes in execution of any decree or order for recovery\* of money shall be charged, irrespective of the grade of the Court issuing such processes and of the class or value of the original suit or case, according to the actual amount including costs and interest awarded, if any, recoverable in execution of the decree or order at the time when the execution is applied for: that is to say, if such amount is or exceeds Rs. 1,000 fees shall be charged under column 2 of the table; if it be Rs. 50 and over but less than Rs. 1,000 they shall be charged under column 3 of the table; and if it be less than Rs. 50 they shall be charged under column 4 of the table.

**Notes.**—In computing the amount recoverable at the time when the execution is applied for, the costs and interest allowed in a previous execution case, if any, shall also be taken into consideration.

**582.** Notwithstanding Rule 580, no fee shall be chargeable for serving or executing—

- (1) any process, such as a notice, rule, summons or warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority or of taking action under secs. 195 and 476 of the Criminal Procedure Code (1898);
- (2) any process issued a second time in consequence of an adjournment made otherwise than at the instance of a party or an intervenor;
- (3) any copy of summons, notice, order, proclamation or other process, posted in a court house or in the office of the Collector;
- (4) any order intimating postponement of sale, withdrawal of attachment or directing restoration of attached property to the person in whose custody it was or its replacement where it was found at the time of seizure;
- (5) any order directing an officer in charge of a jail to detain or to release a person committed to his custody;
- (6) any notice filed by aboriginals in connection with applications under sections 49F, 49H, 49J, 49M, 58 and 74A of the Bengal Tenancy Act.

**583.** (1) No fees shall be charged for fresh service or execution of processes in cases where the parties concerned are not in any way to blame for their being not served or executed.

(2) If in any such case the presiding officer of a Court is satisfied upon such enquiry as he considers necessary that there was failure or want of service on account of neglect of duty or any improper conduct on the part of a process-serving peon, a fresh process should be issued, if required by the party, and the presiding officer should direct the peon in fault to bear the costs incurred in the fresh service.

**584.** In the case of all warrants or other processes which are transmitted for execution or service to the Court of Small Causes, Calcutta, conveyance charges at the rate of Rs. 1-8 per warrant and annas 4 per copy of summons or other process shall be realised and paid in court-fee stamps in advance, in addition to the fees payable under the preceding rules, and before warrants or other processes are so transmitted for execution or service, a certificate of realisation of the charges shall be endorsed thereon by the issuing Court.

**585** (1) In the localities only where and for the periods during which travelling except by boat is in the opinion of the District Judge impracticable, the fees chargeable for the service of processes shall be increased by such percentage not exceeding 50 per cent. as may be necessary to cover the additional cost of boat-hire or ferry-toll for journey in water areas provided that the levy of more than 37½ per cent. as surcharge for boat-hire shall not be directed except with the approval of the High Court. The percentage of surcharge over the fees ordinarily leviable should be reduced when the realisation of the higher amount is found to exceed the additional cost incurred.

**Note 1.**—If it is found that the total annual realisation of boat-hire exceeds the amount necessary to meet the costs of boat-hire in the course of the year, the discretion given him by this rule should be exercised by the District Judge by reducing the percentage of surcharge in such a way as to make the total annual realisation on account of boat-hire equal as nearly as possible to actual expenditure for that purpose. The percentage may be fixed at different rates for different areas according to local conditions and costs of boat-hire.



Boat-hire fees shall be entered in the appropriate column of Form No. (R) 13 for the purpose of ascertaining whether the total annual realisation of boat-hire in court-fees covers the annual expenditure on account of boat-hire. (Rule No. 7 of 1921.)

**Note 2.**—The process-servers' boat-hire passed under this rule should alone be included under the head of "Process-serving charges" under "Special contingencies" (*vide* Resolution of the Financial Department of the Government of Bengal, dated the 4th August 1890).

**Note 3.**—Boat-hire prescribed by this rule for the service of processes shall be charged on processes filed 10 days in advance of the date fixed for the commencement of the boat season but served during the period and shall similarly cease to be levied 10 days earlier than the actual date of termination of the season.

(2) The Judge in charge of the Nazarat at every station shall, in consultation with the presiding Judges of other Courts, prepare a list of areas, localities or villages within the jurisdiction of the Nazarat where and for the periods of the year during which travelling except by boat is impracticable. Areas, localities or villages to which journey may be made without the necessity of boat shall be excluded from the list. A copy of the list when approved by the District Judge shall be sent by the Judge in charge to each Court at the station and the Secretary of the local Bar Association in sufficient time before the advent of the period from which the surcharge is to be levied. The list should be altered or modified from time to time when the state of the country renders it necessary and all changes should be notified in the above manner.

(3) The fees leviable from the parties on account of boat-hire should be realised in court-fee stamps affixed on a separate sheet of paper containing the number, etc., of the case in which the fees are filed and the name, description and residence of the persons on whom the processes are to be served.

**586.** (1) In the localities which are not for the time being subject to rule 585, when, in order to the service of any process, the peon has to cross a ferry, then the amount, if any, legally exigible as toll shall be paid by the Court executing such process from its permanent advance.

(2) The permanent advance mentioned in this rule is the special permanent advance sanctioned by the State Government for the purpose of the rules.

**587.** In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under rule 580 read with rule 585 shall be levied, in the manner above directed, and a note shall be made on the process stating that this has been done. A Court which receives from another Court, whether in the same province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

**Note.**—The fees paid in pursuance of these rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them.

## 2. Use of Adhesive and Impressed Stamps.

**588.** The following rules have been made by the Bengal Government under section 27(b) of the Court-Fees Act, 1870 (VII of 1870), and published with their Notification No. 7175J., dated the 9th September, 1925, to regulate the use of adhesive and impressed court-fee stamps in Bengal, in consequence of the abolition of impressed court-fee stamps in respect of fees up to Rs. 25, namely—

- (1) In cases where the amount of fees is less than Rs. 25 and such amount can be denoted by a single adhesive stamp, such fee shall be collected by a single adhesive stamp of the required value. But if the amount cannot be denoted by a single adhesive stamp, or if a single adhesive stamp of the required value is not available, an adhesive stamp of the next lower value available shall be used and the deficiency shall be made up by the use of one or more additional adhesive stamps of the next lower values which may be required to make up the exact amount of the fee.
- (2) In cases where the amount of fees is equal to or exceeds Rs. 25 and such amount can be denoted by a single impressed stamp, the fee shall be collected by a single impressed stamp of the required value. But if the amount cannot be denoted by a single impressed stamp, or if a single impressed stamp of the required value is not available an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available, which may be required to make up the exact amount of the fee, in combination with adhesive stamps to make up fractions of less than Rs. 25.

## 3. Cancellation of Court-fee Stamps.

**589.** The presiding Judge of every Court shall, under section 30 of the Court-fees Act, 1870 formally appoint an officer, who should ordinarily be the Bench Clerk, whose duty shall be to receive documents to be filed, examine the correctness of the stamps attached thereto, and immediately to effect cancellation of such stamps by punching out the figure heads. Subject to the approval of the presiding officer of the Court, the officer so appointed, may employ trustworthy subordinates to do the mere manual work of cancelling the stamps, provided that he shall be personally responsible for the due execution of the duty and for any defalcation or fraud that may occur in connection with it.

**590.** The presiding Judge shall see that punching is done immediately on presentation of document bearing stamps in Court at a place open to his view from his seat on the Bench, provided that if a document is insufficiently stamped, the stamps affixed thereto should not be cancelled by punching out the figure-head nor should the date stamp be applied thereto. The document should in such cases be returned to the party concerned for resubmission after properly stamped.

**NOTE.**—The date stamp should be applied in such a manner as to cover or touch some part of the adhesive stamps, but not in such a way as to obliterate the entries thereon or to render the detection of forgeries more difficult.

**590A.** No documents to which court-fee stamps are attached, shall be filed or acted upon, until the figure heads of the stamps are punched out, the pieces are destroyed and the stamps are registered.

**NOTE.**—For the second punching of court-fee stamps, on receipt of the records in the record room, see rule 424(3) and Note 1 thereto.

**591.** All stamps on records of cases which are not under the rules (*vide* rules 395, 396) required to be sent to the District Record Room must as soon as they are decided, be punched a second time with a triangular punch by the clerks in charge of the files who should at the same time note the date of his doing so. The second hole in each label should be distinct from the first and the repunching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature.

**592.** The proper officer of the Court issuing copies, certificates or other similar documents, shall before issue cancel the labels and punch the court-fee stamps affixed to them together with the court-fee stamp required for such copy by law (see Articles 6, 7, 8 and 9 of Schedule I of the Court-fees Act, VII of 1870, as amended by the Bengal Court-fees (Amendment) Act, 1922) in the manner directed by paragraph III of the Circular of the Board of Revenue reproduced in Appendix II at the end of this chapter. If the application is disallowed, or if, before the copy is made the applicant intimate that he does not require it, such court-fee stamp may be returned to him, a note of this having been done being made in the register and signed by the proper officer and the applicant.

**NOTE.**—Stamps affixed to affidavits presented to a commissioner for the purpose of administering an oath or affirmation to the deponent, should be dealt with in the same manner as the stamps on copies, certificates, or other similar documents liable to stamp duty.

**593.** Every judicial officer should make an occasional inspection of documents that have been filed in the records of pending and disposed of cases, in order to ascertain that the stamps have been properly punched and defaced, and have not been subsequently removed from the documents on which they have been used. It should also be observed whether proper court-fee has been realised in respect of plaints and other documents and processes. The inspection should be made at least once a quarter and the result recorded. The check herein prescribed applies equally to all papers which require adhesive labels, and they should be subjected to similar scrutiny.

#### **4. Inspection of records by Registration Officers.**

**594.** (1) Government having directed the Inspector-General and Inspector of Registration to examine record rooms of the various Courts in the mufassal in order to ascertain that the rules for cancellation, custody and sale of stamps have been uniformly and properly carried out, every assistance should be afforded by judicial officers to such officers in the discharge of their duty.

(2) It being ordered by the Government that, on the discovery of any irregularity in respect of punching or otherwise defacing court-fee stamps, the inspecting Registration Officer shall at once bring the matter to the notice of the presiding officer of the Court, such latter officer should inquire into the matter at once, in order that the person responsible may be traced.

(3) It is not intended that the inspecting officer should exercise any sort of interference with the arrangements which he may find in force in the offices under inspection and therefore his proceedings, as a rule, should be limited to recording a note of his observations together with any suggestions he may think fit to offer. He should not involve Courts or officers in correspondence with him.

## APPENDIX I.

### Reductions and Remissions of Court-fees. (Order by the Governor of Bengal under section 35 of the Court-fees Act.)

Under sub-section (1) of section 35 of the Court-fees Act, 1870 (VII of 1870), and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole of Bengal or in any part thereof all or any of the fees mentioned in Schedules I and II to the said Act, the Governor is pleased to make the reductions and remissions hereinafter set forth, namely:—

(1) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the Presiding Judge or Officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or Officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(2) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts;

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

(3) to direct that the fee chargeable on appeals from orders under section 47 and section 144 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under article 11 of Schedule II;

(4) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(5) to remit the fees chargeable under articles 6, 7 and 9 of Schedule I on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(6) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article I of Schedule II, on applications for orders for the payment of deposits in cases in which the original deposit does not exceed Rs. 25 in amount;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(7) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884);

(8) to remit the fees chargeable on the following documents, namely:—

- (a) copy of a charge framed under section 219 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof, when the copy is given to an accused person,
- (b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,
- (c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,
- (d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,
- (e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,
- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
- (h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,
- (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties,
- (j) copy of a judgment in a case dealing with an application for a direction, order or writ in the nature of *habeas corpus* when the copy is given to the detenu concerned;

(9) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(10) to direct that, when a part of an estate paying annual revenue to the Provincial Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purpose of the computation of the amount of the fee

## No. 60.

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## Appendix I (Chapter 27)

Page 193—

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In line 2 of clause (11), for the words "fraction of an anna", substitute the words "a fraction of a rupee."

[Notification No. 6730-J., dated the 6th October, 1961, issued by the Government of West Bengal, Law (Judicial) Department.]

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(13) to remit the fees chargeable on applications for copies of documents detailed in clauses (2) and (8) *supra*;

(14) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register kept in the United Kingdom in accordance with the provisions of sections 41 and 42 of the said Act, and that such member was at the date of his decease domiciled elsewhere than in India;

(15) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(16) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(17) to remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1924, in respect of which a fee is payable under those rules;

(18) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun powder, other explosives or detonators required *bona fide* for blasting purposes;

(19) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(20) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in Bengal for execution in pursuance of the provisions of section 44 of the Code of Civil Procedure, 1908 (Act V of 1908);

(21) to direct that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows:—

If the amount deposited does not exceed Rs. 1-4—1 anna.

If the amount deposited exceeds Rs. 1-4 but does not exceed Rs. 2-8—2 annas.

If the amount deposited exceeds Rs. 2-8 but does not exceed Rs. 5—3 annas.

If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10—6 annas.

If the amount deposited exceeds Rs. 10 but does not exceed Rs. 15—9 annas.

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885);

(22) to remit the fees chargeable on application by ryots in the Rajshahi district for licenses to cultivate the hemp plant;

(23) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), provided that such applications or petitions are presented before the publication of such draft record under sub-section (1) of section 103A of the said Act;

(24) to remit the fees chargeable on certified copies of entries in records-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such records-of-rights under sub-section (2) of section 103A of that Act;

(25) to remit the fees chargeable on applications for mutation of names in all Estates vested in the Crown;

(26) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader appointed by the Court to defend a pauper accused of murder;

(27) to reduce the fees chargeable under clause (iii) of article 17 of Schedule II on complaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under article 1 of Schedule I, in cases where the amount of such fee would be less than Rs. 20;

(28) to direct that the proper court-fees chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885, shall be as follows:—

If the number of words does not exceed 360—8 annas.

If the number of words exceeds 360 but does not exceed 720—Re. 1.

If the number of words exceeds 720—Rs. 1-8.

(29) to remit court-fees payable in any proceeding before the manager appointed under the Murshidabad Estate Administration Act, 1933 (XXIII of 1933), provided that every Vakalatnama to be filed in such proceeding shall be stamped with a court-fee stamp of Re. 1;

(30) to remit the fees payable on applications for permit in Form No. 56 of the Bengal Excise and Salt Department for supply of rectified spirit or absolute alcohol duty free;

(31) to remit the fees leviable under articles 11 and 12 of Schedule I on the property of—

(i) any person subject to the (British) Naval Discipline Act (29 and 30 Victoria C. 109), the Indian Navy (Discipline) Act, 1934 (XXXIV of 1934),

the (British) Army Act (44 and 45 Victoria C. 58), the (British) Air Force Act (7 and 8 Geo. V.C. 51), the Indian Army Act, 1911 (VIII of 1911), or the Indian Air Force Act, 1932 (XIV of 1932), who is killed or dies from wounds inflicted, accident occurring, or disease contracted while on active service, or on service which is of a warlike nature, or which in the opinion of the Provincial Government otherwise involves the same risks as active service, and

(ii) any person being a servant of the Crown, civil or military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of these duties, as follows:—

#### *Remissions.*

(a) where the amount or value of property, in respect of which the grant of probate or letter of administration is made, or which is specified in the certificate under the Indian Succession Act, 1925, does not exceed Rs. 50,000 the whole of the fees leviable in respect of that property;

(b) where the said amount or value exceeds Rs. 50,000, the whole of the said fees in respect of the first Rs. 50,000; and

(c) where the property passes more than once in consequence of deaths referred to in sub-clause (i), to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

(32) to remit the fees chargeable on the applications of sole landlords or their agents or of common managers or common agents of joint landlords, or on the joint applications of co-sharer landlords, without any common agent or manager, for the payment of the transfer fee, as defined in rule 24 of the rules under the Bengal Tenancy Act, 1885 (VIII of 1885), published under notification No. 5462J.R., dated the 26th March 1929, at pages 549-92, Part I of the *Calcutta Gazette* of the 25th idem which is payable to them, in accordance with the provisions of that Act;

(33) to remit the fees chargeable on the applications of co-sharer landlords under the first proviso to sub-section (3) of section 26C of the Bengal Tenancy Act, 1885 (VIII of 1885), for the payment of the proportionate share of the landlord's transfer fee which is payable to them under the said sub-section;

(34) *Deleted.*

(35) to reduce the fee chargeable under article 1(b) of Schedule II on an application to deposit arrears of revenue in the Court of the Collector after the latest day of payment fixed under section 3 of Act XI of 1859 to annas 4 only when the amount stated in the application is below Rs. 50;

(36) to reduce to 4 annas the fee of 12 annas chargeable under paragraph 2 of article 1(b) of Schedule II in respect of applications for information when presented to a Civil, Criminal or Revenue Court;

(37) to reduce to 2 annas the fee chargeable under article 1(b) of Schedule II on application for conversion of an uncertified copy into a certified one;

(38) to reduce to 4 annas the fee of 12 annas chargeable under article 1(b) of Schedule II on application for free pass under sub-rule (3) of rule 2 of the Chittagong and Chittagong Hill Tracts Forest Transit Rules, 1932, for removal of forest produce. (Notification of the Government of Bengal, No. 2134J., dated the 14th June 1939.)



(39) to remit the fees chargeable on—

(a) applications under sub-section (1) of section 49F of the Bengal Tenancy Act, 1885 (VIII of 1885),

(b) petitions of complaint referred to in sub-section (4) of section 58 of the Bengal Tenancy Act, 1885 (VIII of 1885), and petitions of complaint in respect of matters referred to in sub-section (1) of section 74A of that Act. (Notification of the Government of Bengal, No. 2997J., dated the 25th August 1939.);

(40) to remit the fees chargeable on applications for a new special license for the home-brewing of pathwai;

(41) to remit the court-fee chargeable on petitions of objection presented to a Revenue-officer in the manner provided by sub-section (3) of section 104B and section 104E of the Bengal Tenancy Act, 1885 (VIII of 1885), in regard to cases arising out of the settlement of produce rents in the partially excluded areas of the district of Mymensingh, Bengal, in the manner referred to in sub-section (2a) of section 112 of the latter Act;

(42) to remit, in the case of an application for withdrawal of the mutation fee deposited for payment to the landlord in pursuance of the Court's direction under sub-section (4) of section 88 of the Bengal Tenancy Act, 1885 (VIII of 1885), the fees chargeable on the application and the Vakalatnama;

(43) to remit the court-fees chargeable on—

(a) applications made by members of the aboriginal tribes under sections 49H, 49J and 49M of the Bengal Tenancy Act, 1885 (VIII of 1885), and

(b) Vakalatnamas for lawyers engaged by the Provincial Government on behalf of the members of the aboriginal tribes;

(44) to remit the court-fees chargeable on the application for licenses to be made to the Licensing Authorities under the Drugs Control Order, 1943;

(45) to remit, subject to the conditions laid down in the proviso to section 8 of the Government Savings Banks Act, 1873, the court-fee chargeable on the probate or letters of administration or certificate (if any) granted in respect of so much of the property of a deceased as represents the amount deposited in Government Savings Bank where such amount exceeds three thousand rupees but does not exceed the amount referred to in clause (a) of section 4 of the said Act;

(46) to remit the fees mentioned in article 12 of Schedule I with which succession certificates granted or extended before the commencement of the Part II States (Laws) Act, 1951.

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the following after clause (51) [Vide slip No. 21]—

(52) to remit the fees chargeable on applications made by members of the Scheduled Tribes under sections 15, 15A, 20(1), 20(2) and 22 of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954)."

Notification issued by the Government of West Bengal, Law (Judicial) Department No. 9817-J., dated the 5th December, 1962.]

60, dated the 27th November, 1963. Files No. 1F—3 of 61 and No. 1F—2 of 62.]

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## APPENDIX II.

The following is the Circular Order issued by the Board of Revenue, and referred to in rule 592 above.

I. *Cancellation of stamps.*—Local officers should direct their particular attention to the provisions of sec. 30 of the Court-fees Act, VII of 1870, regarding the cancellation of stamps used under that Act. The personal responsibility of the officer who gives any order to see that the stamp affixed under Act VII of 1870 is punched before he takes action is clear from sec. 30 of the Act, and must be enforced. The punch to be used by the receiving court or office must be round. The pieces punched out shall be immediately destroyed, so as to prevent their being fraudulently used.

II. *Second punching by record-keeper (Revenue Circular, February 1892).*—The record-keeper of every court or office shall, when a case is decided and the record consigned to his custody, punch a second hole with a triangular punch in each label distinct from the first, and at the same time note upon the fly-leaf the date of his doing so. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature.

These directions apply only to adhesive labels used under the Court-fees Act. Impressed stamps used for denoting court-fees need not be cancelled or punched otherwise than as required by sec. 30 of the Court-fees Act.

III. *Cancellation of stamps in copies.*—The court or office issuing copies, certificates, or other similar documents liable to stamp duty shall, before issue, cancel the labels affixed to them by punching out with a square punch a portion of the label in such a manner as to remove neither the figure-head nor that part of the label upon which its value is expressed. As an additional precaution, the signature of the officer attesting the document, with the date, should be written across the label and upon the paper on either side of it, as is frequently done by persons signing stamped receipts. The stamp shall be punched at the time of attesting the document. An impression apparently exists that the hole, which is punched by the issuing Court or office in the stamp label affixed to copies, certificates, etc., under the preceding order, does away with the necessity for cancellation by punching out the figure-head under sec. 30 of the Act by the court or office in which the copy or certificate, etc., may be produced or filed, but this view is incorrect, and it will be readily understood that the orders in question cannot override the express provisions of the Act.

## CHAPTER 28

### MISCELLANEOUS COSTS AND CHARGES.\*

#### 1. Postage.

**595.** The Central Government has been pleased to direct that the postage charges on all processes, notices, and such other documents as are issued from any judicial or revenue Court, and are required to be transmitted by post, shall be paid by means of service postage stamps, without any additional charge being levied from the parties at whose instance the processes are issued.

**NOTE.**—It is to be understood that processes thus issued should not be registered. If registered, they must be prepaid by stamp.

**596.** In cases where Article 1A, Schedule II of the Court-fees Act is applicable, the records called for should be sent by post, unless a more expeditious method of transmission is immediately available.

**597.** Postage need not be paid by the parties (1) for the transmission and re-transmission of requisitions upon the District Court at the sadar station for the payment of money in deposit to decree-holders or other persons, (2) for the transmission of copies of decrees and certificates under secs. 39 and 41 (Or. 21, rr. 4 to 6) of the Code of Civil Procedure from one district to another, for execution. Such documents should be forwarded with *service labels*, no additional charge for postage being levied from the persons at whose instance they are sent.

**598.** A party applying for withdrawal of a case from a union Court to the Civil Court for trial under section 74 of the Bengal Village Self-Government Act, 1919, or to the District Judge's Court for revision under section 88 of the Act, shall be required to pay in the Civil Court or the District Judge's Court as the case may be, the fee prescribed by Article 1-A, Schedule II of the Court-fees Act (12 annas) in Court-fee stamps for transmission of the record and the union Court should be asked to send the record by "bearing post".

#### 2. Witnesses' Expenses.

**599.** The Civil Courts shall not receive postage stamps in payment of the travelling and other expenses of witnesses. A party applying for a summons on a witness not being a summons made over to a party for service under Or. 16, r. 7-A (i), C. P. Code shall deposit for the latter's expenses a sum in cash, sufficient to cover (when necessary) the transmission of the amount to another Court by money order or postal note.

**Exception.**—When applying for a summons for any of its own officers in his official capacity, Government will be exempt from the operation of this rule.

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\*For Process-fees, see Chapter 27.

**600.** (1) Money orders or postal notes for the payment of witnesses' expenses, or of any other of the peremptory items falling under head (C) of rule 643 of the Account Rules, Part VI, shall be made payable to the cashier of the Court to which the money is remitted. The cashier will receive the money as provided in rule 662 and will deal with it as directed in rule 668.

(2) In the case of money orders the number of the suit and other necessary particulars shall be entered in the coupon which is now attached to all money orders.

**Note.**—When a money order is addressed to the Court, it should direct the cashier to receive the money.

**601.** (1) In fixing the travelling and other expenses of witnesses under Or. 16. r. 2, C. P. Code, the Court shall have regard to the scale laid down in these rules. The sum so fixed shall be tendered by the party to the witness summoned in the case of summons under Or. 16, r. 7-A (i) and deposited into Court when the summons is to be served through the Court.

**NOTE.**—The sum fixed by the Court should be noted in the appropriate place in the summons by the ministerial officer in charge of the file before it is made over to the party for service.

(2) The expenses which a party applying for summons shall be required to pay, shall ordinarily be (a) a diet allowance, and (b) in the case of a witness residing at a distance from the Court, if the journey cannot be performed on foot, or the age, position and habits of life of the witness render it impossible for him to walk, also his travelling allowance according to the scale set out below:—

(3) (a) *Scale of subsistence allowance* —

Per diem

I.—Witnesses of the class of labourers and ordinary cultivators and other persons of similar class ..			7 annas to 10 annas per head.
II.—Witnesses of better class ..			12 annas to Re. 1 per head.
III.—Witness of higher class ..			Re. 1-8 to Rs. 6 per head.

**NOTE.**—Class I will generally include smaller cultivators, labourers, artisans, petty traders and others in a similar condition of life.

Class II will include ordinary landowners, persons belonging to the lower middle class, clerks or assistants, men of business, professional men, etc.

Class III will comprise large landowners, persons enjoying substantial pay, professional men of high position and the like.

**Explanation.**—The above rates are intended to meet the cost of one day's meals. In every case, therefore, the Court should consider the circumstances of the individual and local conditions and grant a reduced allowance where the actual expenses are likely to fall short of the scale in this rule.

(b) *Rates of travelling allowance.*—(i) When the journey is wholly or partly by rail, steamer, tram or public motor service, the witness's actual fare each way, according to the class by which persons of his rank and station in life would ordinarily travel.

**NOTE.**—In the case of a person drawing a fixed salary, in determining the class by which he should ordinarily travel, regard should be had to the standard of classification laid down in the Travelling Allowance Rules framed by the State Government.

See also, Note 1 to sub-rule (7)(a) of this rule.

(ii) When the journey is by any kind of conveyance by road, the actual reasonable conveyance charge up to a limit of six annas a mile, in consideration of the class to which the witness belongs and local conditions.

(iii) In districts where the usual mode of travelling is by water, the actual expenses that will be incurred for boat-hire up to a maximum of Rs. 2 a day.

(4) In addition to the above, the authorised charges for tolls at ferries shall be paid by the party applying for the summons to the extent to which such charges will be incurred.

NOTE.—For the purpose of ascertaining the amount of tolls to be deposited by the parties, a table shall be prepared and kept in each Court showing the distance of each thana from the sadar station and each outlying munsifi, the number of intermediate ferries to be crossed, the authorised rates of charges for tolls at each of such ferries, and the existence or absence of roads or waterways.

(5) In hill districts where it is customary for a respectable person to be accompanied by a man carrying his baggage, such person may, if summoned from a distance of more than five miles, be allowed the actual cost incurred for the hire of one coolie.

(6) If the Court is of opinion that any witness following any trade or business undertaking will suffer loss or inconvenience by attending the Court, the Court may order that the witness shall be allowed such sum as may be reasonable for his expenses.

### No. 61.

#### 200, Rule 601(7)(a)—

For the words "Government Servants" in line 1 substitute "the Government or the State Government Servants".

For the second proviso to the rule substitute the following:—

Provided, further, that in the case where an employee, who is subject to the payment of Wages Act, 1936 (IV of 1936), whether serving under the Central Government or a Railway or any other Commercial Department of Government, is summoned to give evidence in his public capacity in civil cases, fees or expenses deposited for the subsistence allowance or compensation shall be credited in the treasury to the Government or the Railway, as the case may be, to which the employee belongs. [For procedure to be followed in crediting such deposits in the treasury, see Note 6(c) to Rule 643(A) post.]

61, dated the 27th November, 1963. Circular Order No. 6 (Civil) of 1961.]

are attached, and shall be produced by the party summoned to appear as witnesses, in their official capacity by either party in a civil case to which Government is a party.

NOTE 1.—The travelling and other expenses of a Government servant payable by a private party who summons him to produce any record or document or to appear as a witness in a civil case to which the Government is or is not a party whether in his official or private capacity, shall be regulated by these rules and not the Travelling Allowance Rules framed by the Government under which he is serving.

NOTE 2.—Rule 601(7)(a) does not affect Government servants serving in States whose rules require the deposit of salary when summoned to depose in Civil Courts in West Bengal.

Provided, further, that in the case of employees of the Central Government or a State Railway or any other Commercial Department of Government summoned to give evidence in their public capacity in civil cases, fees or expenses deposited for the travelling and subsistence allowances shall be credited in the treasury to the Government or the State Railway, as the case may be, to which the employee belongs. [For the procedure to be followed in crediting such deposits in the treasury, see Note 6(c) to Rule 643(A) post.]

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(b) When a Finger Print Expert of the Criminal Investigation Department is summoned to give evidence in private cases, a fee of Rs. 20 a day in each case, together with his salary, shall be realised from the party concerned; these amounts shall be credited in full into the treasury by the Court concerned. He shall also be treated in such cases as a Government servant on tour within the meaning of rule 135(i) of the West Bengal Service Rules, Part II; his travelling allowances at that rate shall also be realised from the party concerned and be made over to the expert by the Court.

(c) (i). Where the Government Examiner of Questioned Documents or his Assistant is summoned to give evidence or his opinion is sought in cases from private parties in civil suits, a fee of Rs. 250 which will be an inclusive fee normally covering the opinion, the cost of photographs and the giving of evidence limited to one day shall be realised from the party concerned, in addition, in the former case, to the travelling expenses of the officer at the rates laid down for first grade officers in the Supplementary Rules of the Government of India for journeys on tour. Travelling allowance will also be payable for the Class IV servant accompanying the officer at the rates fixed for Government of India Class IV servants.

(ii) In cases where the cost of photographs is exceptionally heavy, the fee will be Rs. 200 *plus* the actual cost of photographs. In cases in which no opinion is given but photographs are taken, only the actual cost of photographs shall be charged, subject to a minimum of Rs. 35. In cases in which examination has been completed but no opinion could be expressed, a consolidated fee of Rs. 100 shall be charged. No reduction in the fee shall be allowed if the evidence is not required or is taken on commission. An additional fee of Rs. 200 shall be charged for each day after the first day on which evidence is given, whether in Court or on commission, or on which the officer is detained. A fee of Rs. 250 shall be charged in a civil suit even for the first day's evidence if the evidence is taken upon an opinion expressed on the same documents when they formed part of a criminal case.

(iii) The fee and the travelling expenses are payable in advance and shall be credited in full to the Central Revenues by the Court concerned which will also be required to forward with the application referred to in rule 227 *ante*, a chalan as provided in Note 8(b)(i) to Rule 643(A) *post*, indicating the deposit of the prescribed fee of the officer, and a certificate indicating the deposit of the amount representing the travelling expenses of the officer and the Class IV servant accompanying him.

NOTE 3.—For details of procedure reference should be made to the Government of India, Ministry of Home Affairs, letter No. 41/3/50-Police II, dated the 6th July, 1953.

NOTE 4.—For the purposes of the rules forwarded with the Government of India, Ministry of Home Affairs, letter No. 41/3/50-Police II, dated the 6th July, 1953, references made by a Court *suo motu* in civil cases to which the State is not a party will be deemed to be cases from private parties.

(d) No charge is ordinarily made by the Master, Security Printing, India, Nasik Road, for giving expert assistance to the Police or to the Reserve Bank in connection with any criminal prosecution, but the following scale of fees to be charged by him has been fixed for the examination of stamps or currency notes and for giving evidence on commission in civil suits in which Government is not one of the parties or for giving expert assistance to private parties:—

(1) For each note examination—Rs. 10 per note.

- (2) For notes examined on commission in connection with forgery cases—Rs. 20 per case.
- (3) For each stamp examined—Rs. 10 but where the stamps to be examined consist of a block or blocks from the same sheet, this fee will be charged for the examination of each block, as any one of the stamps is representative of the whole block.
- (4) For stamps examined on commission—Rs. 20 per document, irrespective of the number of stamps requiring examination on each document; provided that where more than one document relating to the same case is to be examined on the same day, the charge will be Rs. 20 for the first and Rs. 10 for each subsequent document.

NOTE.—In West Bengal the fees for examining currency notes will be credited to the head "XXXVII—Currency—Miscellaneous" and the fees for examining stamps will be credited to the head "IX—Stamps—Central."

### 3. Charges for Affidavits.

602. (1) Subject to the exceptions set out in sub-rule (2) the charge for administering the oath to the deponent in the case of any affidavit under the C. P. Code shall be one rupee in all civil Courts in the West Bengal. This charge shall be paid by means of a court-fee stamp.

(2) No charge should be made in respect of the following affidavits:—

- (i) Affidavits, if any, made by process-servers deposing as to the manner of service of a process.
- (ii) Affidavits in proof of service or as to avoidance of service made by persons, if any, who accompany such process-servers.
- (iii) Affidavits made by public officers in virtue of their office.
- (iv) Affidavits made by the identifier of a *pardanashin* woman in compliance with rule 35.

(3) Fees realised in respect of affidavits under this rule should be shown in column 6 of the Daily Register of court-fees realised.

NOTE 1.—For form of Daily Register of petitions and Court-fees, see Register No. (R) 13, Volume II.

NOTE 2.—Affidavits not under the O. P. Code or not connected with any case shall be charged for under Article 4 of Indian Stamp Act (11 of 1899).

### 4. Expenses of Commissions.

603. (1) Besides incidental expenses of commissions, the sums mentioned in the following table are, apart from exceptional circumstances, considered by the High Court reasonable remuneration as maxima. It is not, however, intended to fetter the Court's discretion under Or. 26, r. 15, Civil Procedure Code, particularly in cases where superior expert knowledge is required and is available. If in any instance the payment of fees according to the table shall not appear to the Court to be just and equitable, it may, for special reason to be recorded in the order, award a higher or lower fee than that therein prescribed.

(2) The scale is intended for cases where the work is likely to take only a day or two. When a consolidated fee is to be paid for work, taking some time, a considerable reduction in the rates specified below will ordinarily

be desirable. These rates are maxima only rarely to be exceeded and they should not be applied indiscriminately to all classes of

Nature of the Commission.	Classes of Commissioners.	Maximum rate in courts of a—			Remarks.
		District and Subordinate Judge.	Small Cause Court Judge.	Munsiff.	
1	2	3	4	5	6
1. For the examination of witnesses.	Pleaders or other persons appointed as Commissioners.	Rs. a. 15 0	Rs. a. 6 0	Rs. a. 6 0	For each sitting of six hours. Full fee may be allowed if the witness or witnesses are examined in less than six hours and also for any incomplete period when the examination lasts more than a day.
2. For local investigations which require knowledge of surveying.	(i) Pleaders (survey passed)	24 0		12 0	Daily (a day consists of six hours).
	(ii) Other persons (including unpassed pleaders).	4 8 to 6 0	..	4 8 to 6 0	Ditto.
	(iii) Professional surveyors—				
	(a) With the qualifications of Executive or Assistant Engineers.	45 0	..	45 0	Ditto.
	(b) With qualifications of Sub-Engineers.	15 0 to 22 8	..	15 0 to 22 8	Ditto.
	(c) With qualifications of Overseers (graduate).	7 8	..	7 8	Ditto.
	(d) With qualification of Overseers (apprentice)	3 0 to 6 0	..	3 0 to 6 0	Ditto.

**NOTE 1.**—Before the issue of a commission a consolidated inclusive fee which must not be exceeded save in special circumstances should be fixed wherever practicable with due regard to all the circumstances of the case, the complexity or otherwise of the work, the probable duration of the commissioner's work and the current fees of pleaders or persons of the standing of the commissioner. The grant to a commissioner of the fee fixed will be contingent upon his showing that he has executed the commission with efficiency and reasonable despatch.

**NOTE 2.**—In suitable cases a lump fee may be fixed instead of a daily fee, regard being had to the nature of the work and the time and labour it may involve.

**NOTE 3.**—If surveyors nominated by the Director of Surveys are employed as civil Court commissioners, they should ordinarily be remunerated at the rate which may be suggested by the Director.

**NOTE 4.**—The following statement of the daily outturn of work required by the Survey Department from professional agency will afford some guide to the Courts in determining the work involved in a particular commission:—

(1) Boundary survey	...	...	...	Half a square mile.
(2) Plain table survey of fields	...	...	...	15 acres.
(3) Extraction of areas	...	...	...	250 plots.
(4) Tracing and numbering	...	...	...	750 plots.
(5) Traverse line	...	...	...	100 chains.

**NOTE 5.**—No standard can be laid down for desk work. In each case a sum will have to be fixed with reference to the difficulty or importance of the work and the time and labour that it may have taken.

\*[This does not apply to Oooch Behar.]



**NOTE 6.**—The foregoing rates of remuneration are intended, in the case of the persons included in class (iii), only as a general guide. When possible, the remuneration of professional surveyors should be regulated by the rules framed by Government regarding the employment of such officers in Government service.

**NOTE 7.**—The cost of sending and returning the papers relating to a commission by registered post should be realised in cash from the parties (O. O. No. 2 of 1932).

**604.** No general rule can be laid down for commissions to make partition, examine accounts, ascertain mesne profits or value of any property, etc., or other kinds of commission. In such cases the Court issuing the commission should fix a sum commensurate with the difficulty and importance of the work and the length of time that it might take. In suitable cases a reasonable sum in lump may be fixed as remuneration instead of a daily fee.

**NOTE.**—When a partition commission requires a knowledge of surveying and a survey passed pleader or other person with the required knowledge in surveying is appointed, he should be paid at the rate given in items (i) and (ii) of column 2 of the table in rule 603 (see also Note 2 to that rule).

**605.** As a general rule, the amount to be allowed as incidental expenses should be regulated by the scale of travelling allowance prescribed for officers of Government of the class to which the commissioner belongs; but in exceptional circumstances, and if the commissioner is not a judicial officer, should the Court be of opinion that his actual expenses cannot be covered by allowances calculated on this scale, it may, for reasons to be recorded, order such further sum to be paid as it thinks reasonable.

**NOTE 1**—For the purpose of this rule, a commissioner should ordinarily be treated as a second class officer.

**NOTE 2.**—If the time spent in going to the place of investigation and returning therefrom comprises several days, the court may allow a daily fee for such period at any rate not exceeding the maximum halting allowance prescribed for second class officers under the Government Travelling Allowance Rules.

**606.** Commissioners who are judicial officers are not entitled to fees, nor to any further remuneration than is permissible under the Government travelling and halting allowance rules. No other sum should therefore be demanded of the parties. The sum paid will be credited to Government, and the commissioner will recoup himself by drawing travelling allowance under the Government Travelling Allowance Rules.

**NOTE.**—This rule also applies when a judicial officer goes for local inspection.

**607.** Judicial officers should bear in mind that a commissioner would be justified in refusing to execute a commission, if the party has not deposited cash sufficient to pay his fee as well as all his necessary incidental expenses. A commissioner's remuneration should be paid in cash, unless he is a judicial officer.

**608.** In any case in which the sum fixed for the expenses of the commission and paid into Court shall have been calculated with regard to the time likely to be occupied in the execution of such commission, the Court should instruct the commissioner that, in the event of his finding that the time fixed is insufficient, he should give timely notice to the party at whose instance the commission was issued, and at the same time, report the fact to the Court giving an idea of the time the execution of the commission may further take. The sum necessary to cover the expenses for such further period as may be required to complete the execution of the commission as determined by the Court should then be deposited in Court by the party. If the additional deposit be not made within the time fixed by the Court, the commissioner on receiving intimation from the Court to that effect will suspend work and the trial should proceed without the commissioner's report.

**609.** If a commission for examination of witnesses be issued to a Court, the expenses to be charged should include only the necessary process-fees for summoning the witnesses, to be paid in court-fee stamps, the usual allowance to witnesses for their attendance to be paid in cash when summoned through Court, and where the papers are to be sent by post, the costs of sending and returning them by registered post. In the event of the non-attendance of a witness or witnesses, any surplus payment should be refunded.

**610.** If a commission for examination of witnesses is to issue to a pleader practising in another Court, the fee shall be received in cash and transmitted, together with the commission, and in cases where the post is used, the costs of sending the papers to the pleader and of their return to the issuing Court, in each case by registered post, to such Court, not being the High Court.

**611.** The Court receiving a commission for examination of witnesses issued to a pleader under the preceding rules shall immediately deliver it to him, unless he refuses to act, or is not found present. If the witness or witnesses appear before him and are examined, so that he can make a return within the time limited, the fee for the work done shall, on his returning the commission duly executed, be paid over to him; any surplus shall be sent back, together with the commission, to the Court which issued it, and shall be refunded by such Court to the party who paid it. If, from the absence of a witness, or other good cause, the commissioner cannot make a return within the time limited, he must obtain an extension of time or other orders from the Court which issued the commission.

**612.** All applications for refunds of money deposited for the expenses of commissions must be made within three years of the time when the right to the refund accrues. Applications made after the expiry of three years will not be considered.

## 5. Expenses of guardian ad litem.

**613.** When a pleader is appointed as a guardian *ad litem* under Or. 32 r. 3(1), regard shall be had to the following table in fixing his fee though it is not intended to fetter the court's discretion in cases requiring special treatment:—

1. In the Courts of Munsifs.			Rs.
In money and other suits under ordinary procedure—			
Where value does not exceed Rs. 100	...	...	2
Where it exceeds Rs. 100	...	...	4 to 8
In rent suits or other suits under the B.T. Act—			
Where value does not exceed Rs. 100	...	...	2
Where it exceeds Rs. 100	...	...	4
In Small Cause Court suits and miscellaneous proceedings and execution matters			
...	...	...	2 to 4

**11. In the Courts of District and Subordinate Judges.****Rs.**

In Small Cause Court suits and miscellaneous matters and execution proceedings	...	...	...	4 to 10
In suits tried under ordinary procedure	...	...	...	8 to 32
In appeals	...	...	...	8 to 32

**III.** In cases where there are adult defendants as well as the minor and they appear by pleader, if such pleader be appointed guardian *ad litem* of the minor, the remuneration to be paid to him shall be half of what would have been paid to a pleader not appearing on behalf of other defendants.

**IV.** A pleader appointed by a Court to be a guardian *ad litem* shall not incur any expenses on account of travelling without the leave of the Court.

**NOTE.**—The fees mentioned in the above table refer to the fees of guardians in respect of the duties which they perform in the Courts by which they are appointed. If the proceedings are carried to another Court and the guardian by reason of the duties imposed upon him under Order 32, Rule 3(5) of the Civil Procedure Code, has to incur additional expenditure in that Court, *e.g.*, by briefing an Advocate to represent the interests of the minor in cases in which separate representation of the minor is essential, special fees will be sanctioned by the Court which appoints the guardian.

**614.** When a guardian of a minor defendant is appointed under Order 32, Rule 3(1), Civil Procedure Code, the Court appointing him shall, in the order appointing the guardian, direct the attention of such guardian to the provisions of Order 32, Rule 3(5) of the Code.

**615.** If at any subsequent stage of the suit or the proceedings mentioned in Order 32, Rule 3(5) of the Code, the duly appointed guardian does not wish to continue to act as such, he shall immediately notify the Court in which the suit or any proceedings connected therewith may be pending, to enable such Court to appoint another guardian in accordance with law.

**616.** A ministerial officer when appointed by a Court to be guardian *ad litem* of a minor or minors shall receive only his actual out-of-pocket expenses (*e.g.*, postal and stationery charges, etc.), properly incurred in the performance of his duties as such guardian. If he has to go to the locality for inquiry under the order of the Court, he should get actual travelling expenses [*vide*, rule 601 (3) (b)].

## CHAPTER 29

### LEGAL PRACTITIONERS' FEES.

**Rules regarding the fees payable to legal practitioners framed under section 27 (c) of the Legal Practitioners' Act XVIII of 1879.**

**617.** In suits for the recovery of specific property, or a share of specific property whether immovable or movable, or for breach of any contract, or for damages—

(1) If the amount or value of the property, debt, or damages decreed shall not exceed Rs. 5,000, at  $7\frac{1}{2}$  per cent. on the amount or value decreed.

(2) If the amount or value shall exceed Rs. 5,000, and not exceed Rs. 20,000, on Rs. 5,000 at  $7\frac{1}{2}$  per cent., and on the remainder at 2 per cent.

(3) If the amount or value shall exceed Rs. 20,000, and not exceed Rs. 50,000, on Rs. 20,000 as above, and on the remainder at 1 per cent.

(4) If the amount or value shall exceed Rs. 50,000, on Rs. 50,000 as above, and on the remainder at  $\frac{1}{2}$  per cent.

Provided that in no case shall the amount of any fee exceed Rs. 3,000.

**618.** When such suits are settled, withdrawn, compromised, decided on admission of claim or dismissed for default, the fee shall not exceed one fourth of the fee calculated under rule 617 unless the Court otherwise directs, subject to a maximum of Rs. 500.

**619.** Where such suits are decided *ex parte* the defendant not entering appearance or having entered appearance, not contesting, the fee payable shall not exceed one half the fee calculated under rule 617 unless the Court otherwise directs, subject to a maximum fee of Rs. 1,000.

**620.** (1) In suits for injuries to the person or character of the plaintiff, such as suits for assaults or defamation, or for injuries to property, or to enforce rights, where the pecuniary value of such injury or right, cannot be exactly defined, as in suits for interference with a right to light or water, or to enforce a right of pre-emption, or suits for the partition of joint property, where partition is improperly resisted, and generally in all suits not included in rule 617, if the plaintiff succeed, the Court may order the fee of the pleader for the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit, or according to such a sum, not exceeding the valuation, as the Court shall think reasonable and shall fix with reference to the importance of the subject of the dispute. In any such case, the amount of the pleader's fee shall be calculated according to the scale in rule 617.

(2) In this and in the following rules, cases under Part III of the Land Acquisition Act, I of 1894, shall be deemed to be suits, and the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector, or on any smaller amount which the Court in its discretion may think proper.

(3) In the event of the sum tendered by the Collector being decreed, pleaders' fees may be awarded to Government on the difference between that sum and the sum claimed, or on any smaller amount which the Court in its discretion may think proper.

(4) Provided that, in any case in which the remuneration under the above rules shall, in the opinion of the presiding Judge, prove to be insufficient, or in any case not provided for, he shall be at liberty to allow pleaders' fees, as in miscellaneous classes under rule 627.

**621.** If the suit be dismissed upon the merits, or be decided in favour of the defendant, the defendant's pleader's fees shall be calculated according to the scale in rule 617 on the whole value of the suit. If the suit be dismissed on the merits and a decree awarded to the defendant for any matter not included in the plaint, the defendant's pleader's fee shall be calculated upon the amount involved in the plaint, *plus* the amount decreed, according to the scale in rule 617.

**622.** If the suit shall be decreed for the plaintiff as to part only of his claim, and as to the remainder shall be dismissed or decreed for the defendant, the fees payable by any party in respect of the fees of his adversary's pleader shall be fixed with reference to the value of that part of the claim in respect of which such adversary shall succeed, and shall be calculated according to the scale in rule 617.

**623.** (1) If in any suit for unliquidated damages the plaintiff shall as to the whole of his cause of action, but shall fail to recover the full amount of damages claimed, the defendant shall not be entitled to any allowance for a pleader's fee in respect of the difference between the amount of damages claimed and the amount recovered, unless the Court shall be of opinion that the amount claimed for damages was unreasonable or excessive, and shall, for that or any other cause to be specified, direct that a fee for his pleader shall be allowed to the defendant.

(2) If specially allowed, the amount of such fee shall be fixed with reference to the amount of damages disallowed to the plaintiff, and shall be calculated according to the scale in rule 617.

**624.** In addition to any fees prescribed in the above rules 617-623 any costs awarded in any proceeding under Ors. 11 and 12, C. P. Code, shall be on the same scale as in a miscellaneous proceedings under rules 627 and 638 notwithstanding anything in those rules to the contrary.

**625.** If several defendants, who have a joint or common interest, succeed upon a joint defence or upon separate defences substantially the same, not more than one pleader's fee shall be allowed, unless the Court shall otherwise order for a reason which shall be recorded. If only one fee be allowed, the Court shall direct to which of the defendants it shall be paid, or shall apportion it among the several defendants in such manner as the Court shall think fit.

**626.** If several defendants who have separate interests, set up separate and distinct defences and succeed thereon, a fee for one pleader for each of the defendants who shall appear by a separate pleader may be allowed in respect of his separate interest. Such fee, if allowed, shall be calculated with reference to the value of the separate interest of such defendant, according to the scale in rule 617.

**627.** (1) In execution and miscellaneous proceedings, or for any matter other than that of appearing, acting or pleading in a suit prior to decree, the fee when allowed, shall not ordinarily exceed the following scale:—

	Rs.
In the Court of a District or Subordinate Judge	... 150
In the Court of a Munsif	... 50

**NOTE 1.**—When fee is allowed in an execution case an order should be recorded by the Court stating the amount.

**NOTE 2.**—In miscellaneous proceedings, a special sum determined according to the value and circumstances of each case shall be awarded on account of the adversary's pleader's fee and the award of such sum shall be distinctly recorded at the foot of the order in the hand of the presiding Judge unless each party is directed to bear his own costs.

(2) In miscellaneous appeals, or appeals from orders, except in cases where it may be ordered that each party shall pay his own costs, a specific sum shall be awarded as payable on account of the adversary's pleader's fee, and the award of such sum shall be distinctly recorded by the presiding Judge at the foot of the order, with the other costs, if any, incurred by the parties respectively.

**NOTE 1.**—This rule does not apply to Courts of Small Causes: *See* rule 638.

**NOTE 2.**—For the purposes of these rules, cases under Part IV of the Land Acquisition Act, 1 of 1894, shall be treated as "miscellaneous cases," and the fees allowable to pleaders therein shall be calculated under rule 627. (*Rule No. 6 of 23rd March, 1885.*)

**628.** Fees in the hearing of interlocutory applications in suits are in the discretion of the Court and if allowed, they shall not exceed the scale in rule 627.

**629.** If a review be rejected after summoning the opposite party, or if, after the admission of a review, the former judgment be upheld, the pleader's fee, if allowed to the successful party in the review, shall be fixed by the Court at an amount which shall not in any case exceed one-half of the amount allowed by these rules in case of an original decree.

**630.** If, after the admission of a review, the former judgment be reversed, the fee of the pleader in respect of the review, if allowed to the party who succeeds in the review, shall not exceed one-half the amount allowed by these rules in cases of an original decree. The fee allowed in respect of the review will be irrespective of any pleader's fee which may be included in any costs, in respect of the original suit, which may be adjudged to the successful party by the judgment in review.

**631.** The amount to be allowed on account of the fee of an adversary's pleader in appeals shall be calculated on the same scale as in original suits, and the principles of the above rules as to original suits shall be applied, as nearly as may be, to appeals.

**NOTE.**—This rule does not apply to appeals from orders.

**632.** When the interest of several appellants is joint, not more than one pleader's fee shall be allowed, unless the Court shall otherwise order for a reason to be recorded. If one fee only be allowed the Court shall direct to which of the appellants it shall be paid, or shall apportion it amongst the several appellants in such proportions as it shall think fit.

**633.** If several respondents in one appeal appears by separate pleaders, in determining whether several pleaders' fees shall be allowed, the Court shall be guided by the principles laid down in rules 625 and 626.

**634.** (1) If under the provisions of Or. 41, r. 23, the decree of a lower Court be reversed on appeal, and the case be remanded to the lower Court to be tried upon the merits, the lower Court, on passing its decree, may allow to the successful party such a sum as the Court shall consider to be reasonable, not exceeding half the amount calculated according to the scale in rule 617 on account of his pleader's fee in respect of the re-hearing, in addition to the full amount of his pleader's fee calculated according to that scale:

(2) If an appeal be preferred against the decree passed on remand, the fee, if any, allowed by the appellate Court to the party succeeding in that appeal shall not, unless for a special reason to be recorded, be less than one-fourth, nor more than half of the amount calculated at the rate mentioned in rule 617, if, by the decree of the appellate Court, remanding the case, the same party shall have been allowed a full pleader's fee in respect of the former appeal in the suit, either absolutely or conditionally, upon his succeeding upon the remand:

(3) If under Or. 41, r. 25, C. P. Code, an issue be framed and referred by the appellate Court for trial by the lower Court, the appellate Court may, if it thinks proper, allow to the party who shall succeed in the appeal such a sum as the Court shall consider reasonable, not exceeding half the amount calculated at the rate mentioned in rule 617, for his pleader's fee in respect of the trial of the issue in the lower Court, in addition to a full fee, in respect of the appeal, calculated at that rate.

**635.** Notwithstanding the provisions of rules 617 to 634, and subject to the provisions that in no case shall the amount of any fee be less than Rs. 2, if in any instance the payment of fees shall not appear to the Court to be just and equitable, it may, for special reason to be recorded in the judgment or order, award a higher or lower fee than that therein prescribed.

In cases in which the subject matter of the claim does not admit of valuation, the Court shall fix reasonable fee, regard being had to the time occupied in the decision of the case and the nature of the questions raised therein.

**637.** When a *mukhtar* is employed, 15 per cent. of the sum allowed as pleader's fee shall be allowed as such mukhtar's fee and the remaining 85, per cent. only shall be allowed as the pleader's fee.

**638.** Rules 617 to 637 so far as they are applicable, extend to Courts of Small Causes constituted under Act IX of 1887, with this exception that in rule 627, the following scale shall apply to Small Cause Court suits:—

A fee not exceeding Rs. 20.

**639.** Revenue agents should be allowed half pleader's fees. If a pleader and revenue agent be retained and act on the same side in the same suit, one pleader's fee should be allowed.

## PART VI—Account Rules\* (Judicial)

### CHAPTER 30

#### General.

**640.** The following rules prescribe the procedure for the receipt and payment of money, and for keeping accounts, to be observed by officers exercising judicial powers and dealing with money in that capacity. They apply to all Judges, Additional Judges, Subordinate Judges, Munsifs, and Small Cause Court Judges, and these are all included under the general term "Judge."

**NOTE.**—The Judge of the Small Cause Court at Sealdah has been exempted from these rules as there is no treasury at Sealdah, and the Judge keeps a small cash chest, rendering accounts to the Accountant-General direct. (Deputy Accountant-General's No. 183, dated 30th April, 1881.)

**641.**—In these rules—

(1) (a) "District Judge" means the officer whose accounts are rendered to the Accountant-General, either for his own Court only, or for his own and subordinate Courts. Any officer may be vested with the powers of a District Judge for the purposes of these rules; and in any district in which a District Judge is not for the time being resident, they shall be exercised by the principal civil judicial officer at headquarters.

**Note.**—Only one set of returns should be sent to the District Judge for the Courts whose accounts are kept together, and not a separate set for each Court. (Accountant-General's No. 141-A., dated 26th April, 1881.)

(b) In districts, where there is no resident District Judge, the principal civil judicial officers at the headquarters are the officers invested with the powers of a District Judge for the purposes of accounts; and they will keep and render the accounts of all the Civil Courts in their respective districts. A District Judge cannot delegate his powers as regards accounts to any of his subordinates. What he can do, when absolutely necessary, is to place any of the officers subordinate to him in charge of accounts, without in any way relieving himself of responsibility for the due accounting for all receipts and payments. When this is done, the Judge's establishment will do all the work in connection with the accounts, the subordinate officer will sign the papers as if he were placed in charge of the current duties of the Judge's Court, and to the chief ministerial officer of the District Judge's Court (but of no other Court at headquarters stations) may be delegated the duty of passing chalans.

(2) "Out-station" means Courts not situated at or near a treasury or sub-treasury and includes Courts at or near sub-treasuries during such time as the sub-treasuries may be temporarily closed owing to the absence of the Sub-divisional Officer from his headquarters.

(3) The term "Judge in charge" is used to designate the officer who, when there are two or more Courts at one station, supervises the single set of accounts maintained for all such Courts. When there is but one Court at a station, the Judge thereof is the "Judge in charge" of his own accounts.

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\*The account forms referred to in the rules will be found in Volume II, Appendix A-I, Nos. (A) 1 to (A) 33. The appendices at the end of the Part are intended for the guidance of officers in carrying out the rules.



**NOTE.**—At headquarters stations the accounts for all Courts shall be kept in the District Judge's Court. At subdivisions and out-stations, the documents of all Courts shall be kept in the office of the Munsif placed by the District Judge in charge of the accounts of that station, and to his office shall be attached the staff of the Accounts Department.

(4) "Day" must be taken as closing one hour earlier than the hour at which the local treasury closes and no transaction shall take place in Court after that hour. The accounts must be made up and the cash balance remitted to the treasury before the treasury closes. If any transactions have to be allowed under the law (vide rule 647) or under any special circumstances after the accounts are closed, they must be forthwith entered in the cash book bearing date the next open day. The total of such transactions shall be shown in lump as receipts after the day's accounts are closed, or 'payments after the day's accounts are closed', as the case may be, in cash reconciliation memo. of the day, made under rule 673.

**NOTE.**—On the last working day of each month it is necessary that the accounts be closed at 11-30 a.m. or at the hour prescribed above, whichever is earlier.

(5) "Month" shall be taken to close, in Courts at district headquarters, at the end of the last account day of the month; in Courts at sub-treasuries, at 1-30 p.m. on the day on which the accounts of the subdivisional treasury are finally closed for the month; and at out-stations, at 1-30 p.m. of the last day, on which the accounts can reach the treasury in time for incorporation with the treasury accounts for the last day of the month.

(6) "Year" in all Courts shall be taken to begin on the 1st April and to close on the 31st March.

**642.** (1) Erasures and overwritings in any account, register, schedule, cash book, etc., are absolutely forbidden; if any correction be necessary, the incorrect entry should be cancelled neatly in red ink and the correct entry inserted. Each such correction or any alteration deemed necessary shall be authenticated.

(2) Account books should be kept in bound volumes paged throughout before they are brought into use, the total number being certified on the cover by the accountant and attested by the dated initials of the Judge in charge.

**NOTE.**—This rule does not apply to the Register of deposits received, to which the monthly detailed statements of A deposits in the subordinate Courts are to be attached, vide rule 721.

**643.** The following are the heads of accounts under which the money received and paid by judicial officers, or under their orders, is classified:—

(A) *Government receipts.*—This head is subdivided into the following sub-heads of account:—

- (i) Stamp duty and penalty realised in Court.
- (ii) Judicial fines and forfeitures.
- (iii) Other general fees, fines and forfeitures.
- (iv) Sale-proceeds of unclaimed and escheated property.
- (v) Court-fees realised in cash.
- (vi) Miscellaneous fees and fines.
- (vii) Miscellaneous.

**NOTE 1.**—Sub-head (i) is classified in the public accounts under the major head "IX—Stamps" and sub-heads (ii) to (vii) under the major head "XXI—Administration of Justice" of which they form the minor heads. The accounts under the sub-heads (i) and (ii) are maintained in detail in the Court as well as in the treasury (see rule 645).

**NOTE 2.**—Penalties levied on instruments not duly stamped under Chapter IV of the Stamp Act are credited to the major head “IX—Stamps” in the public accounts. The stamp duty is classified under the minor head “A. Non-judicial duty on impressed documents” and the penalty under the minor head “B. Judicial fines and penalties.” These are classified together in the Courts’ accounts under the sub-head (i) above, but the duty and the penalty must be separately shown in the chalan sent to the treasury in order that they may be credited separately under the above minor heads. [See rule 743(I).]

**NOTE 3.**—The sub-heads (ii) and (iii) are subdivisions of the same minor head “General fees, fines and forfeitures,” under the minor head “XXI—Administration of Justice.” The receipts under the sub-head (ii) are credited to the treasury with a chalan for each item and appear in the treasury accounts in detail (see rules 645 and 690). Under the sub-head (iii) are credited the fees of Civil Courts, forfeitures of earnest money of defaulting bidders and other general forfeitures and these are sent to the treasury with a single consolidated chalan every day. (See rules 672 and 690.)

**NOTE 4.**—Proceeds of unclaimed property of intestates are credited under the sub-head (iv). District Judges’ Courts and the Court of the Small Cause Court Judge and Subordinate Judge, Sealdah, who has been empowered under section 23 of the Bengal, Agra and Assam Civil Courts Act, 1887, to take cognizance of proceedings under Bengal Regulation V of 1799, only in the case of the citizens of India dying intestate in the Nilratan Sarkar Medical College and Hospital, Calcutta, deal with the unclaimed property of intestates. The value of the proceeds cannot be credited to Government until the time limited by law has expired (*vide* Rule 744).

**NOTE 5.**—Under sub-head (r) are credited process-server’s fees realised in cash, recoveries on account of pauper suits, and other items relating to cash realisation of court-fees.

#### No. 62.

213, Rule 643(A), Note 6—

For the words “travelling and subsistence allowances” appearing in rules 3 and 4 of clause (c) to the Note and in line 4 of *nota bene* below the word *substitute* the words “subsistence allowance or compensation”.  
62, dated the 27th November, 1963. Circular Order No. 6 (Civil) of 1961.]

than the amount actually deposited by the parties and credited to Government. Government servants summoned to give evidence should further submit with their bill a certificate of attendance which shall be given by the Court.

(ii) In cases where the amount deposited is not sufficient to cover the travelling allowance, fees and other expenses of the Government servants, they shall not proceed till the balance has been deposited by the parties.

(iii) In cases where the Government servants do not travel or where there is a balance remaining after crediting to Government the fees admissible and the amount of travelling allowance or other expenses drawn by the Government servants, the unspent deposit shall remain in the hands of the Cashier as Peremptory Cash till withdrawn by parties or transferred to Civil Deposit in accordance with rule 692.

**Exception.**—When the pay of Government servants summoned to give evidence does not exceed Rs. 10 per mensem, or when their headquarters are within 5 miles of the Court in West Bengal, and also in cases covered by rule 137 of the West Bengal Service Rules, Part II, all amounts received on account of their travelling and other expenses should be paid in full to them, a certificate of payment being at the same time granted.

(c) In the case of employees of the Central Government or a State Railway or any other Commercial Department of Government [*vide* the second proviso to rule 601(7)(a) *ante*], fees or expenses deposited for the travelling and subsistence allowances shall be credited in the treasury in the case of an employee of—

- (i) the Central Government, to that Department of the Central Government to which he belongs;
- (ii) a State Railway, to that Railway to which he belongs; and
- (iii) any other Commercial Department of Government, to the department to which he belongs;

and to enable this to be done, the following particulars will be inserted in the chalan:—

- (1) Number of case.
- (2) Name of witness.
- (3) Official designation.
- (4) Office in which employed.
- (5) Name of court in which he appeared.
- (6) Date of hearing.
- (7) Names of parties in the case.
- (8) Total amount.

**N.B.**—A timely intimation shall be given to the Nazir that the statement of the Government or State Railway servant, as the case may be, appearing as a witness has been duly recorded so that there may be no avoidable delay in crediting the fees or expenses deposited for the travelling and subsistence allowances into the treasury under the relevant head and before the record of a decided case is consigned to the record room. An additional copy of chalan crediting the money by the Nazir into the treasury shall be attached to the record of a decided case. The record-keeper shall not receive any record to which the chalan is not attached.

**NOTE 7.**—Under sub-head (vii) are credited all miscellaneous receipts, *e.g.*, sale-proceeds of forms and of old stores and materials and other items. The details of "other items" should invariably be furnished in the chalan sent to the treasury.

**NOTE 8.**—(a) The cost of photographic enlargements of finger prints made by the Finger Print Bureau of the Criminal Investigation Department as well as the pay and fees of the Finger Print Expert, when summoned to give evidence at the instance of a private party, shall be received in cash and dealt with as peremptory receipts. On receipt of such sums by the cashier, the Superintendent of Police, or the official superior of the officer whose services have been requisitioned shall be informed that the necessary costs have been deposited and retained in the custody of the Court and on receipt of the report of the Superintendent of Police or the official superior of the Expert, as the case may be, as to the costs incurred by the Police force or the Expert by way of travelling allowance and other expenses, the amount should be paid out of the cash held in deposit by the Court concerned into the treasury to be credited to the Police Department under "XXIII—Police—Fees, Fines and Forfeitures (Provincial)." A chalan in triplicate shall be prepared and forwarded with the cash to the treasury. One copy of the chalan will be retained by the treasury; of the other two copies returned by the treasury, one will be retained in the Court and the other sent by the Court to the office of the Inspector-General of Police with a duplicate of the Court's certificate in Form No. (M) 33 of the Civil Rules and Orders, Volume II. Costs of Police help in execution proceedings and of photographic enlargements of handwritings made by the Handwriting Expert of the Criminal Investigation Department as well as the pay and fees of the Handwriting or Foot-print Expert belonging to the same Department—being receipts of the Police Department are also to be received in the above manner and credited to the treasury under "XXIII—Police—Fees, Fines and Forfeitures (Provincial)."

(b) (i) The fee charged in each case in which an opinion is required of the Government Examiner of Questioned Documents or his Assistant or when such officer is summoned to give evidence at the instance of a private party, shall be received in cash and dealt with as peremptory receipts. The sum so received shall, on receipt by the cashier, be forthwith paid separately by him into the treasury to be credited to the Central Revenues under head "XLVI—Miscellaneous—Central—Other Fees, Fines and Forfeitures—Fees for the services of the Government Examiner of Questioned Documents." A chalan in triplicate shall be prepared and forwarded with the cash to the treasury. One copy of the chalan will be retained by the treasury; of the other two copies returned by the treasury, one will be kept in the Court and other sent to the Government Examiner of Questioned Documents, Intelligence Bureau, Ministry of Home Affairs, "Dormers", Simla-I, with the requisition for the services of the Government Examiner of Questioned Documents or his Assistant. The Government Examiner of Questioned Documents will in cases in which the whole or part of his fee is to be refunded, furnish a certificate to the Court, giving details of the amount refundable. On the authority of the certificate the Court concerned will be in a position to authorise the refund to the party concerned of the amount deposited in excess. When the refund has been directed by the Court the order permitting such a refund will be forwarded to the Deputy Director (Establishment), Intelligence Bureau, Home Department, Central Government, who has been empowered to authorise refund of such fees.

When the aforesaid order of the Court has reached the Deputy Director (Establishment), he should fill in the details of credits and other particulars (which would be available from the certificate of the Treasury Officer received from the party concerned under rule 6 of the Rules regulating application for and payment of the service of the Government Examiner of Questioned Documents), in the relevant columns of form No. C.A.C. 17 and after recording sanction on the form should pass it on to the Accounts Officer in whose jurisdiction the treasury in which the amount was originally credited, is located. On receipt of the form, the Accounts Officer should verify the details as far as possible from his records, endorse a 'pay order' thereon and pass it on to the Treasury Officer concerned with a forwarding letter for payment after verification with the original credit. A copy of the forwarding letter should also be sent to the payee and the Deputy Director (Establishment) with a view to enable the latter to note the fact of payment in the original records, as an additional precaution against entertaining a double claim (*vide* Central Government, Home Department, letter No. 128/3/41-Police, dated the 19th February, 1942, to Director, Intelligence Bureau).

(ii) When the Government Examiner or his Assistant is required to travel in order to give evidence or for any other purpose, the party employing his services will be required to pay travelling allowance at the rates laid down for first grade officers in the Supplementary Rules of the Central Government for journeys on tour. Travelling allowance is also payable for the Class IV servant accompanying the officer at the rates fixed for the Central Government Class IV servants. The amount of travelling allowance will be deposited by the party with the presiding officer of the Court before the journey is undertaken. Such deposits will be treated by the Court as peremptory receipts pending credit into the treasury on receipt of intimation from the Accountant-General, West Bengal.

NOTE 9.—All Government receipts shall without undue delay be paid into the treasury as laid down in Treasury Order No. 7. No refund should be made in respect of receipts under the sub-head (vi) [*see* rules 685 and 686].

(B) *Civil deposits.*

NOTE 1.—Any sum deposited in Court under sec. 379(1) of the Succession Act (XXXIX of 1925), with an application for a certificate or for the extension of a certificate must be classed under "Civil deposits."

NOTE 2.—See Note 4 to rule 654.

NOTE 3.—For rent deposits under sec. 61(1)(a) and (b) of the Bengal Tenancy Act, 1885, see note 6 under head (C).

NOTE 4.—Redemption money realised under sec. 26F of the Bengal Tenancy Act, 1885, should be adjusted under this head.

NOTE 5.—Fees payable to commissioners other than those for taking evidence should be deposited to the credit of the presiding officer of the Court concerned and transferred later to the credit of the particular commissioner. The money should be withdrawn by the commissioners themselves on filing applications for payment orders which do not require court-fee. If the commissioner does not reside at the station in the treasury of which the amount is deposited, payment order should be issued in the favour of the cashier who should transmit the amount by money order. The receipt and payment of such money by the cashier should appear in the Cash Book [General Letter No. 10 of 1931].

NOTE 6.—No sum which can be credited to ~~an~~ account No. 11.

## Page 215, Rule 643(c)—

For the words "accounts of which are to be kept only in the accounts of the Court" in line 2 of the rule, substitute "accounts of which are to be kept in the accounts of the Court and in the treasury accounts but not in the later case in detail".

[No. 11 dated the 15th June, 1958, Circular Order No. 5 (Civil) of 1957.]

No. 12  
are in Court the chalan obtained as evidence of payment.

(ii) (a) Fee, travelling allowance, etc., payable to persons appointed or deputed by the Court for specific purposes, *e.g.*, guardian *ad litem*'s fee, commissioner's fee for taking evidence, nazir's travelling in execution proceedings, etc., etc.

(b) Sums to be expended by officers of the Court in order to comply with or enforce the Court's order in cases or execution proceedings, *e.g.*, pulling down a wall or house, maintenance of live stock in the custody of the nazir, publication of sale proclamation in newspapers, postage for sending summonses or processes, ordered to be sent by post, or the concise statement of attachment and proclamation under sec. 163 (3) (c) of the Bengal Tenancy Act as amended by the Bengal Act IV of 1928, or notice to creditors in insolvency cases, etc., etc.

(c) Rent deposits and costs of transmission under sec. 61 (1) (a) and (b) and (2) of the Bengal Tenancy Act, 1885.

(d) Subsistence moneys of prisoners.

(e) Costs of adjournment or costs when a party is put on any terms.

(f) Other peremptory receipts.

NOTE 1.—See rule 692 and the Notes thereunder.

NOTE 2.—Money orders or postal notes for the payment of witnesses' expenses, or of any other of the peremptory items falling under head (C) shall be made payable to the cashier of the Court to which the money is remitted. The cashier will receive the money as provided in rule 662 and will deal with it as directed in rule 668. In the case of money orders, the number of the suit and other necessary particulars shall be entered in the coupon which is attached to all money orders.

NOTE 3.—The Civil Court shall not receive postage stamps in payment of travelling and other expenses of witnesses.

NOTE 4.—For disposal of the peremptory cash received on account of the travelling allowance of the Nazir for execution of a process, etc., or for travelling and other expenses and fees of Government servants recovered under Order XVI, Civil Procedure Code, or otherwise, when (i) summoned to appear as witnesses in Civil Courts in their official capacity in all cases whether Government is a party or not, (ii) appointed as commissioners or proceeding for local inspection, or (iii) required to produce Government records, see Note 6 to Rule 643(A).

NOTE 5.—As regards money received for payment of postage and postage stamps received, see note to rules 668 and 673.

NOTE 6.—Rent deposits and costs of transmission received under sec. 61(1)(a) and (b) and (2) of the Bengal Tenancy Act, shall forthwith be transmitted to the landlord by postal money order. The amounts remitted by money order, if refused by the payee or returned undelivered by the post office, shall be treated as "Civil deposits" and credited into the treasury as such under rule 643, head (B) above.

NOTE 7.—For payments of sums received under head (C), see rule 650.

**644.** Rule 643 applies only to money received by an officer in his judicial capacity and not to local fund receipts and payments, nor to money received by way of permanent advance, or upon establishment or contingent bills (see rule 673).

NOTE.—As regards local funds there is a separate system of rules. In dealing with all Government receipts and with money received by way of permanent advance or upon establishment and contingent bills, a judicial officer should be guided by the Financial Rules of the State Government and the Subsidiary Rules framed by them under the Treasury Orders.

**645.** The receipts and payments under head (B) of rule 643 must appear in the Court's account in detail but in the treasury account in which a personal ledger account only is maintained for this head, the daily totals of receipts and payments made at the Court and the individual items of receipts and payments at the treasury will appear. All receipts and payments under sub-heads (i) and (ii) of head (A) above must appear in the Court's accounts and in the treasury accounts in detail. An account in detail of all receipts under sub-heads (iii) (vi) and (vii) of head (A) must be kept in the Court,

but only the daily totals of each kind of receipts will appear in the treasury books. All receipts and payments under head (C) will be made on the responsibility of the cashier, whose security must be sufficient to cover any amount in his hands. They will not appear in details in the treasury accounts, but the balance in the hands of the cashier must be noted daily in the cash book, as well as the balances of any other moneys with which he may be entrusted (e.g., permanent advance, or pay of establishment).

NOTE 1.—Fractions of a pie are not to be entered in the Court's accounts, and they should neither be received nor paid. (H. C. Progs., August 1898, No. 35.)

NOTE 2.—To facilitate the checking of accounts, signatures of the payees in respect of unexpended diet money of witnesses and other classes of payments must be dated.

NOTE 3.—Cashiers and others authorised to make disbursements on passed vouchers, should make no payment without a proper pay order of the responsible disbursing officer recorded clearly in ink on the bill or other voucher. No payment should be made on a voucher or order unless it is signed by hand and in ink.

**646.** An exception to rule 645 is allowed in cases where the Court sanctions the payment of money by one person to another and both are present in Court. In such cases the money may be passed direct from the one to the other, the fact being noted in the record of the case (*see*, rule 156). Such transactions are not to appear in the accounts at all. This procedure may conveniently be followed in cases where judgment-debtors are prepared to satisfy the claims of judgment-creditors, where costs are ordered to be paid as condition precedent, or where sums in excess of those paid in Court are to be paid to witnesses.

**647.** Judges will, as far as possible, in their transactions with the public, avoid the direct receipt and payment of money under head (B) of rule 643. Cash must, however, be received—

(a) when the Court is bound by law to accept payment either absolutely or up to a given time (*vide* sec. 55, and Or. 21, rr. 84 and 85), and in every such case the money shall be received even although tendered after the hour prescribed by rule 641(4);

(b) when the proceeds of movable property sold in execution (Or 21, r. 77) are realised after the hour prescribed in rule 641(4);

(c) Any sum deposited under sec. 379 (I) of the Indian Succession Act (XXXIX of 1925), must be received in cash, even though tendered after the hour prescribed by rule 641(4).

**648.** At out-stations cash transactions under head (B) of rule 643 are allowed. Money should, however, be received in cash only when, having regard to the balance in hand (which should not ordinarily exceed Rs. 500), this can conveniently be done. Payments of small sums should ordinarily be made out of cash in hand, but large payments should be made in cash, only if this can be done conveniently, and if it is better thus to disburse the balance of cash in hand than to remit it to the treasury.

**649.** Subordinate Judges and Munsifs exercising Small Cause Court powers, though their Courts are situated within daily reach of a treasury, may, by special order of the High Court, be empowered to receive and pay in cash small sums coming under head (B) of rule 643. The sums so paid shall not in any case exceed Rs. 100 in amount.

**650.** Money under heads (A) and (C) of rule 643 may ordinarily be received in cash in all Courts. As explained in rule 685 repayments under sub-heads (i) to (vi) of head (A) should ordinarily be made only through the treasury. Repayments of deposits in favour of Wards estates or of privileged landlords will be made at the treasury only, and not in cash, but by transfer to the credit of the personal ledger account of the estate or the

privileged landlord concerned [see Note 4 to rule 674 (1) and Note 2 to rule 681 *post*]. Under head (C) payments will ordinarily be made in cash by the cashier on his own responsibility. No refunds should be made on account of sub-head (vii) of head (A).

**651.** Except in the case of Courts at out-stations the whole cash balance must be remitted to the treasury (or to a branch bank, *vide* note 2 to rule 697), as provided by rule 693 below, at the close of each day. At out-stations the entire cash balance must be so remitted on the last day of the month, and from time to time on such other days in the course of the month as may be convenient. Should, however, the cash balance at any out-station be less than Rs. 25 at the end of any month, the officer concerned may send a special report of the circumstances to the Collector of the district and keep the balance in hand for remittance during the following month. Under no circumstances shall the balance of cash in hand be allowed to exceed Rs. 500, unless the special permission of the Court has been secured to accumulate the same up to a higher limit. In the case of munsiffs of masonry construction provided with safes of approved make, the balance of cash may, however, be allowed to accumulate up to a limit of Rs. 1,000.

**NOTE 1.**—The expression “cash balance” or “the balance of cash in hand” means the balance of cash pertaining to heads (A) and (B) of rule 643 and excludes the amount of permanent advance, peremptory cash, establishment pay, etc. (Circular Order No. 15 of 1931).

**NOTE 2.**—When the cash balance at any out-station at the end of the month is not less than Rs. 25 and not more than Rs. 100, it should be remitted to the treasury by money order. (For procedure to be followed in such cases, see Note 3 to Rule 697, *post*.)

**652.** If, after a remittance, and before further cash has come in, payments in cash are necessary, they should be made from the permanent advance.

## CHAPTER 31

### RECEIPT AND PAYMENT OF MONEY.

#### 1. Receipt of Money.<sup>1</sup>

SUB-HEADS (i) TO (r) OF HEAD (A) AND HEAD (B) OF RULE 643

#### Chalans required.

**653.** Payment of sums falling under sub-heads (i) to (r) of head (A) and under head (B) of rule 643 cannot be accepted either in Court<sup>2</sup> or at the treasury, unless the money be tendered with chalans signed by the chief ministerial officer of the Court under whose decree or order the money is tendered. When the amount is to be paid in cash into Court, the chalans shall bear the express order of the presiding Judge directing the cashier to receive the money; when the amount is to be paid into the treasury, the chalans shall bear the express order of the Judge in charge of accounts directing the treasury officer to receive the money. When money is paid into the treasury, or under the sub-heads (i) and (ii) of head (A), into Court, it should be tendered with chalans in triplicate, but in the case of payments into Court under the other heads, chalans in duplicate only are required.

**654.** Any person desirous of paying money into Court, or, in the case of collections made by any officer of the Court, the officer who has realised the money, shall be furnished, free of cost, with the requisite number of forms of chalan [Form No. (A)1], in each of which he must enter in the vernacular or English the particulars required from him. One of the chalans, herein called the original chalan, shall bear the court-fee stamp (if any) required by law.

**NOTE 1.**—Money realised by a peon or the nazir of the Court in execution of a process shall be paid with a single copy of chalan which shall be filed with the record of the case.

**NOTE 2.**—In the case of deposit chalans care must be taken to enter fully the nature of the deposit, the number of the suit or execution case (if any), the name of the person on whose behalf the money is paid in and of the person to whom it is to be paid over, etc.

**NOTE 3.**—No stamp is required for a tender of money which a party is bound to pay into Court in the progress of a suit or to complete a purchase or to deposit decretal amount under Or. 21, rule 1(1), as the Court cannot refuse the tender.

In cases where the payment is voluntary, such as deposits made on account of rent, or by a mortgagor and the like, a stamp should be required; but if the application or petition be duly stamped, a second fee should not be exacted for the chalan.

**NOTE 4.**—In the case of sums deposited under sec. 379(1) of the Indian Succession Act (XXXIX of 1925), the deposit chalans must show that the amount is deposited to the credit of the Judge.

**NOTE 5.**—(a) All payments into Court for deposit under the Land Acquisition Act, 1894, shall be made by means of cheques drawn by the Land Acquisition Officer in favour of the presiding officer of the Court to credit of Civil Court deposits. The transactions will be passed through the Court's accounts in the same way as a deposit in cash.

<sup>1</sup>For Supplementary Rules as to receipts under head (A), see rules 740 to 748.

<sup>2</sup>For rules regarding receipt of decretal amount, etc., remitted by money order, see rule 160 *et seq.*



(b) The cheques of the Land Acquisition Officer shall be accompanied by receipts in triplicate in Form No. (A) 33, duly filled up, of which one will be retained by the Court for record, and the other two returned, duly signed, to the Collector. Payments of the amounts deposited shall be made under the rules for the payment of Civil Court deposits.

[N.B.—These receipts should be regarded as chalans and dealt with in the matter of numbering and registration in the same manner as chalans tendered with other civil deposits. It is not intended that there should be a separate register for them, the Register of Chalans being sufficient for the purpose.]

(c) When a Court awards any compensation in excess of the Land Acquisition Officer's award, the further payment due shall also be made into the Court by means of the Officer's award, the further payment due shall also be made into the Court by means followed; Form No. (A) 33, being used with the necessary changes in order to give full particulars of the order of the Court.

(d) Investments under secs. 32 and 33 of the Land Acquisition Act, of money deposited in Court, shall be arranged for, in the case of Government securities, in communication between the Court and the Accountant-General concerned, and purchase of land should be effected under the Court's orders through the Collector or other revenue authority of the district. The Accountant-General will inform the Court what sum should be remitted in order to enable him to make the investment, and this amount will be paid from the deposits in Court.

**655.** The person desirous of paying in the money, having filled up the forms of chalan, shall present them to the chief ministerial officer of the Court mentioned in rule 653. The latter shall then ascertain by a reference to the record of the case or register concerned, that the amount tendered is correct, and is due, from the person on whose account it is tendered, to the person to whom it is stated to be payable, and, after correcting the forms of chalan, if necessary, shall sign Part 1. If the money is to be paid into the treasury, the chalans shall be taken direct from the chief ministerial officer of the Court to the accountant. When the money is to be received by the cashier, the chief ministerial officer shall obtain the order of the presiding Judge directing the cashier to receive the amount entered in the chalans. The chalans shall then be taken with the money to the cashier who, on receiving the money, shall enface the chalans with his receipt as prescribed in rule 663 and pass them on to the accountant of the Court or set of Courts.

The accountant shall number the chalans and enter them in a Register of Chalans [Form No. (A) 14]. If the amount be a deposit paid into Court, he shall enter the transaction in the Register of Deposit Receipts also, and fill up Part II of the chalans: If the amount be a deposit to be paid into the treasury he shall obtain the order of the Judge in charge of accounts directing the treasury officer to receive the amount entered in the chalans.

NOTE.—When money is to be paid into the treasury, column 2 of Part II of the chalan will be filled up only in the duplicate copy, after it is received back from the treasury under rule 664(2), simultaneously with the posting of the items in the Register of Deposit Receipts (rule 705).

**656.** The Register of Chalans shall be kept in several parts, the first being set apart for registering all chalans under the sub-heads (i) and (ii) of head (A) of rule 643 as well as those chalans for which money is paid direct into the treasury. There should be a separate part for each of the sub-heads (iii), (iv) and (v) under head (A) and also for payments into Court under head (B) of rule 643, made in accordance with rules 647 and 648. At the close of the day's transactions, consolidated chalans for all receipts recorded in each of the latter parts should be prepared and entered in the first part, numbering them in continuation of the last-serial in it.

NOTE.—For receipts in cash under sub-heads (vi) and (vii) of head (A) of rule 643, see rule 672, post.

**Registry of chalans:** Entries to be approved by Judge in charge.

**657.** A separate index number shall be given to each chalan. The chalans entered in each part of the Register of Chalans shall be numbered in a consecutive series, which shall be entered both in the register and on the chalans. The accountant shall be careful to enter in the chalan the particular head or sub-head under rule 643 to which the receipt belongs.

**658.** (1) The register and the chalans shall then be laid before the Judge in charge, and he shall initial each entry as he passes the chalans. If the money be paid into the treasury, the three chalans shall then be returned to the party tendering the money, and shall be his authority to pay the same into the treasury.

(2) When payment is made into Court, one copy of the chalan shall be returned to the person paying the money as his receipt. This receipt shall be produced by him in Court when it is necessary for him to have satisfaction entered upon the record of the case to which he is a party; or when it is necessary to have a sale confirmed or notices issued upon the landlord in cases of rent deposits, or upon the creditor in cases of debt due to a mortgage creditor, and the like. The other copy or one of the two copies of the duplicate or triplicate chalans shall be retained by the accountant of which one copy shall be filed with the record of the case to which the person paying the money is a party, and the other copy in the case of receipts under the sub-heads (i) and (ii) of head (A) of rule 643 sent to the treasury with the pass book.

**NOTE 1.**—For payment into the treasury the order on the officer in charge of the treasury in the lower portion of Part II of the chalan form [Form No. (A) 1] should be signed by the Judge in charge.

**NOTE 2.**—For payments to the cashier of the Court, the above order in the chalan form need not be signed by the Judge in charge but instead of it, the certificate in the lower portion of Part III of the form should be signed by him.

**NOTE 3.**—At subdivisions and out-stations, the Judge in charge may, with the previous sanction of the District Judge, delegate to the chief ministerial officer of his Court the duty of passing chalans, but he will not thereby be relieved of his responsibility.

**659.** No person is required to take out a chalan till he is actually ready to pay in the money for which he takes it, but a chalan, once having been taken out, must be presented without delay. The order to the treasury officer must therefore be limited in its operation to the day upon which the chalan is made over to the applicant, or, if the transaction occurs after the accounts are closed [rule 641(4)], to the next open day. This is distinctly provided for in the form of order. In case of failure to tender the money at the treasury within the time limited, the Judge in charge may extend the time if the cause shown by a written application is considered sufficient.

**NOTE.**—When a chalan is issued on the treasury it may be acted upon till 3 p.m. of the day following that on which it is issued, if so ordered by the Court. But when the chalan is for the receipt of money at the Court it should be restricted in its operation to the day of issue (*vide* Accountant-General's No. 452, dated 9th August, 1882).

**660.** In the case of out-stations, the order to the treasury officer shall be so dated as to allow sufficient time to the payee to reach the treasury, but not more time than is necessary for this purpose shall be granted.

**SUB-HEADS (vi) AND (vii) OF HEAD (A) AND HEAD (C) OF RULE 643.**

**661.** Receipts under sub-head (vi) and (vii) of head (A) of rule 643 (searching, copying or comparing fees, sale-proceeds of forms and other receipts and sale proceeds of old stores and materials) when payable in cash,

shall be tendered in the first place to the accountant, and noted by him in a special register [Form No. (A)15]. The accountant shall enter the name of the tenderer, the amount to be paid, and the number and date in the foil and counterfoil of the register, shall then detach the right-hand portion, and make it over to the tenderer for presentation with the money to the cashier.

**662.** Premptory receipts under head (C) of rule 643 shall be tendered to the cashier direct without the intervention of the accountant. A chalan is not required for such payments.

#### Receipt of Money by Cashier.

**663.** The cashier on receiving a chalan in duplicate or triplicate addressed to him under rule 655 or a payment slip issued by the accountant under rule 661, or a tender of money under rule 662, shall accept the money, and at once enter the amount as a receipt in the appropriate cash book, or Per-emptory Cash Register (rules 668 and 670) and then sign the chalan or the payment slip.

**664.** (1) When the chalans have been so enfaced by the cashier with his receipt, they shall be passed on to the accountant, and the subsequent procedure laid down in rules 655 to 658 should be followed. This receipt shall be produced in Court by the person paying the money, when it is necessary for him to have satisfaction entered upon the record of the case to which he is a party; or when it is necessary to have a sale confirmed or notices issued upon the landlord in cases of rent deposits, or upon the creditor in cases of debt due to a mortgage creditor, and the like. Of the two copies of the chalan retained by the cashier, one shall be filed with the record of the case to which the person paying the money is a party.

(2) In the same way, on presentation of the chalan (in triplicate) at treasury, as prescribed above in rule 659, and on payment of the money, the payer shall receive, as an acknowledgment, one of the three chalans signed—by the treasury officer, if the amount be Rs. 500 or more—by the accountant and treasurer, if less than that sum. Of the two copies of the chalan retained by the treasury officer, one copy shall be forwarded to the Judge in charge together with the advice lists referred to in rule 700, in order that it may be filed with the record of the case in connection with which the deposit was made.

(1) When, under clauses (a) and (b) of rule 647 above, a tender is made of money which must, by law, be received, the payment shall be made direct into Court in case, but only under the express order of the presiding Judge to be recorded in the chalans who shall see that one copy of the chalans duly signed by the cashier and the Judge in charge or the accountant in the manner laid down in rules 658, 663 and 664 (1) reach him and is filed with the record of the case.

(2) The Sale Account Register [Form No. (A)28] shall be filled up in every case under clauses (a) and (b) of rule 647 by the nazir or other officer holding the sale, and shall be presented by him at the close of the day to the presiding officer of the Court under the orders of which the sale has been held.

**NOTE.**—The provisions of the Code of Civil Procedure render it necessary that cash should sometimes be received by the nazir even where sales are held at headquarters, where there is a treasury. It is therefore very important that all Judges should see that the cash so received is duly forwarded to the treasury and credited in account. In cases in which there has been a set off, columns 1, 2 and 3 of the Sale Account Register should be filled in and the words "set off" noted in the column of Remarks.

**666.** In the case of payment slips the cashier shall countersign the slip, which the applicant is to retain as a voucher, and, when a copy has been applied for, his authority to take delivery of the same when ready.

**667.** When money is tendered under rule 662, the cashier shall enter the amount in a bound book of receipt forms [Form No. (A)23] numbered in serial order. Each receipt shall be in duplicate and the office copy shall be prepared simultaneously with the original by means of carbon paper. The original, which shall bear the same serial number as the carbon copy, will be torn off at the perforated line and presented to the payer as his voucher. Each bound book shall contain one hundred forms and before a book is brought into use a book number shall be given in manuscript on the front page of the book and attested with the dated initials of the Judge in charge. This number shall also be noted on every page before the number printed on it by machine. In case the foils and counterfoils are not used or are spoiled they shall be cancelled under the dated initials of the Judge in charge. No copy shall be torn off from the book. The nazir shall also certify on the first page of the book the number of forms it contains. A separate stock book shall be maintained in which the receipts of such books from the press and their issue to the cashier shall be properly accounted for. One book shall be issued to the cashier at a time who shall grant a receipt for it in the stock book. A new book shall be started from the beginning of each financial year, any unused pages of the previous book being marked "cancelled" and signed by the Judge in charge. The number of receipt books in stock shall be verified annually by the Judge in charge.

**NOTE.**—The receipt books and the stock book shall remain with the sheristadar or the accountant as the Judge in charge may direct.

#### **Peremptory Cash Register.**

**668.** To exhibit the peremptory receipts and payments [head (C) of rule 643], for which the cashier is responsible, and of which the accountant keeps no record, the cashier shall maintain a register in Form No. (A)24 in which such receipts and payments shall be exhibited in the appropriate columns. A balance shall be struck at the close of each day and the total shall be written both in words and figures.

**NOTE.**—Money received for payment of postage should be shown along with other peremptory receipts in the cashier's Peremptory Cash Register. (Accountant-General's No. 101-A., dated 26th April, 1881.) As regards postage stamps received. see Note to rule 673.

At the close of each day the accountant should check the totals of the Peremptory Cash Register, and examine the entires in that book with the counterfoils of the bound book which the cashier has to maintain under rule 667 and with all vouchers, receipts, etc., showing payment or expenditure. He should satisfy himself by such examination that all payments or expenditure are correctly noted against the original items of deposits, and initial the Peremptory Cash Register and each counterfoil and voucher, etc., in token of his having verified and found everything in order. The totals of receipts and expenditure of peremptory cash should be shown in the cash book under rule 670 after such verification by the accountant.

#### **Cash Book.**

**670.** All receipts by the cashier under the heads (A) and (B) of rule 643 shall be entered by him with the necessary details on the receipt side of the cash book, which shall be maintained in Form No. (A)25. At the end of each day's transactions, the total of these receipts will be noted below them, and this total should agree with the total amount in Part I of the Register of

**Chalans** maintained by the accountant (*see*, rule 672). Similarly all payments under the head (B) made by the cashier under rule 688 shall also be entered in detail on the payment side of the cash book. When the transactions under any head or sub-head are large, a subsidiary register for such head or sub-head may be opened in which the receipts and payments shall be entered in detail and the daily total from it shall be posted in the cash book. For peremptory receipts under the head (C) and for contingencies, permanent advance, establishment pay, etc., the daily total of the receipts and payments from the Peremptory Cash Register (rule 668), the Contingent Register, etc., shall then be entered below the above entries in the cash book.

**NOTE 1.**—Being restricted to transactions in actual cash, the General Abstract Cash Book is not to show receipts in the form of court-fee labels, or refunds of the value of these, which, under rule 686 are ordinarily payable only at the treasury.

**NOTE 2.**—But if any refunds are made on account of the value of these stamps out of the cash in the Court [and this is allowable only in the cases contemplated in Note 2 to rule 686], they should be included in the cash book like other payments in cash. (Accountant-General's No. 43-T.M., dated 28th April, 1882.)

**671.** A register in form No. (A)26 shall be maintained by the cashier to show serially the amount of money received by him after cashing bills and cheques from the treasury.

#### Accountant's check on Petty Receipts.

**672.** At the close of each day, the cashier shall submit to the accountant his cash book, and the accountant shall check the entries of receipts under sub-heads (vi) and (vii) of head (A) of rule 643 with those on the counterfoils of the register mentioned in rule 661. The accountant shall then prepare chalans for the total amount of the receipts under each sub-head and enter them in the first part of the Register of Chalans [Form No. (A)14] as an amount received in Court. The total amount in the first part of the Register of Chalans thus completed must agree with the total of the receipts in the cash book under heads (A) and (B).

**NOTE 1.**—The chalan referred to above should be signed by the cashier. (Accountant-General's No. T. M. 503, dated 9th October, 1903.)

**673.** The cashier will then strike a balance in his cash book (to be entered in words as well as in figures). In order that the Judge may see at a glance a statement of all the money in the cashier's possession, details should be entered at the side space of the balance showing the amounts held on each account. The statement may be in the following form:—

Rs. a. p.

General cash balance.....	
Peremptory cash balance.....	
Balance of permanent advance as per contingent register and establishment pay undistributed.....	
Other amounts (which should be explained).....	
Receipts after the day's accounts are closed.....	
Less payments after the day's accounts are closed.....	
Total money in cashier's possession.....	

**NOTE.**—Postage stamps received by way of remittance should not be mixed up with cash receipts. An account should be kept separately in the form of a plus and minus memo., the stamps being added as they are received, and deducted when they are sold or otherwise disposed of, and the balance in hand should be entered daily, as directed above, in the Cash Book.

## 2. Payment of Money.

### Application for Payment.

**674.**—(1) Persons desiring to draw money deposited in Court under head (B) of rule 643 and payable to them shall submit to the chief ministerial officer of the Court under whose decree or order the money was tendered, an application in Form No. (A)2 or, in the case of a rent deposit, in Form No. (A)3. One copy of such form shall be supplied free of charge. In this form the applicant shall enter all particulars necessary for the identification of the credit. Any number of deposits made in the same case may be withdrawn on a single application, but the number and date and amount of each deposit must be separately and clearly stated. A separate application must be made for deposits in separate cases.

**NOTE 1.**—Separate applications must be filed in respect of deposits made in the same case before and on or after the 15th August, 1947.

**NOTE 2.**—The form of application should not be extended by pasting slips of paper.

**NOTE 3.**—If the party entitled to the money does not appear in person, the applicant must satisfy the Court that he is duly authorised by an instrument in writing to draw the money for the person so entitled.

**NOTE 4.**—The applicant must comply strictly with the terms of the order which the money is claimed. Thus, one of a number of joint decree-holders cannot be allowed to take out what he calls his share in the decretal amount; they must all join in the application unless there has been an order for distribution.

This note is not intended to prohibit the payment of the entire amount of deposit to one of a number of joint decree-holders or to one of joint land-holders on the certificate of the Court under whose orders the money was received, that the amount is payable to him for himself and for all the others, whose names should be mentioned. What is intended to be barred is the payment of this amount in instalments to the several decree-holders separately, unless there has been an order for distribution. (Accountant-General's No. 45-T.M., dated 28th April, 1882.)

**NOTE 5.**—In the case of an application for payment of a deposit in favour of a Wards estate, or of a privileged landlord, which will be paid not in cash, but by transfer at the treasury to the personal ledger account of the estate or the privileged landlord concerned (see Note 2 to rule 681), the Manager of the estate, or the said privileged landlord or the duly authorised agent, of either, as the case may be, in making his application, should insert the words "by transfer" in column 6 of Part 1 of the Form (A) 2. If the personal ledger account of the estate or the privileged landlord is maintained at a treasury other than that at which the repayment of the deposit is to be made, a money order form duly filled in in favour of the treasury officer who maintains the account should accompany the application, in order that the amount may be remitted, less money order commission.

(2) In cases in which court-fee stamps are purchased by the nazir from deposits, the final order for the payment of such deposits must contain a direction to the treasury officer to pay the amount in stamps to the nazir of the Judge, to whose credit it was deposited, and to transfer the amount of deposit to stamp revenue.

**NOTE 1.**—A duplicate of the application need not be filed with the record. All that is necessary is that, before passing on the application to the accountant, the chief ministerial officer shall note the order for the payment on the records of the case, so that a second claim for the amount may not be passed. (Accountant-General's No. 93, dated 3rd July, 1883.)

**NOTE 2.**—This rule should not be held to apply to outlying munsifs, at places where there is no treasury. In such cases the Munsifs should purchase stamps from local stamp-vendors, for cash, out of the deposit money in their hands. (H. G. Progs., June 1892, Nos. 466, 467.)

(3) The chief ministerial officer of each Court shall maintain a register in Form No. (R)38 with the object of checking the prompt disposal of the applications referred to in clause (1) of this rule. Columns 1 to 5 of this register shall be filled in as soon as an application is received, and every subsequent step in dealing with it under rules 675 and 676 shall be recorded in the

remaining columns. All applications should ordinarily be disposed of and payment orders made over to the applicants as soon as possible but not later than seven days from the date of their filing in Court. The chief ministerial officer of the Court should daily make a list of payment orders sent to the accountant from column 11 of the register and forward it to him for noting the dates of issue of the application from the Accounts Department. This list shall be returned by the accountant within two days of its receipt, and from it the dates of making over the payment orders to the applicants shall be noted in column 13 of the register.

**NOTE.**—Applications for payment order shall be dealt with in their chronological order, unless otherwise directed by the Court.

#### Audit of Application.

**675.** The chief ministerial officer shall compare the application with the record of the case, and carefully test the validity of the claim. If he finds that the name of the payee has been correctly given, and that there is no objection to the payment of the money on the ground of attachment or otherwise recorded under rule 678, he shall make enquiry as to the identity of the applicant, and, if satisfied of such identity, shall sign the certificate at the foot of Part I of the application, and after obtaining the signature of the presiding officer to it, pass on the application so signed to the accountant of the Court or group of Courts. Such accountant shall compare the contents of the application with the Register of Deposit Receipts, and shall satisfy himself that the amount as shown has been received and is still unpaid, that the name of the claimant corresponds with the name of the payee entered in the register and that no order for the attachment of the money has been recorded under rule 678 and is in force. If the deposit has been transferred to the Clearance Register (rules 727 and 728) such Clearance Register shall be deemed to be the Register of Deposit Receipts within the meaning of this rule and rules 680 to 683.

**NOTE 1.**—The chief ministerial officer will enter in the order-sheet of the record of the case a note that payment order has been issued, so that a second claim for the amount may not be passed. This note should be signed by that officer and also by the presiding Judge.

**NOTE 2.**—In dealing with an application for payment order in connection with an item of the case "Peremptory Cash" which has been transferred to "Civil Deposit", the payee's bill filed in and sanctioned by the Court concerned, which is subsequently filed by the claimant or otherwise passed on to the Judge in charge, shall be forwarded by the Cashier along with the application to the Accountant who shall satisfy himself that the claimant is the actual payee and that the number of the item sought to be withdrawn and quoted in the application for payment order tallies with that recorded in the Deposit Register and is still unexpended. The Accountant shall also, at the time of every payment from the deposit, note down in column 5 of the Deposit Register against the item just going to be repaid the date and amount of each payment, in addition to the note of payment in the outer columns for recording particulars of repayment.

**676.** If the record of the case has been despatched to the District Record Room under the orders of the High Court relating to the periodical despatch of records by subordinate judicial officers (rule 395) the presiding officer of the Court to which the application is made, shall forward it to the District Judge, whose record-keeper will certify, under countersignature of that officer, that a specified sum of money is due to the applicant, and that no order for the attachment of the money has been recorded under rule 678. On receipt of such certificate, the chief ministerial officer of the subordinate Court shall make enquiry as to the identity of the applicant, and, if satisfied of such identity, shall sign the certificate at the foot of Part I of the application and further deal with it in the manner prescribed by rule 675.



**NOTE 1.**—The application with the certificate shall be sent back by the record-keeper to the Court from which it was received with as little delay as possible but not later than a week from the date of its receipt. No application shall be returned without the certificate on the ground that the description of the record as given by the applicant is inaccurate in some respects if the particulars given are sufficient to identify the record or if there are means of finding it out. If an application is so defective that it cannot be dealt with under this rule, it shall be promptly returned with a note giving definite information regarding the particular defect or error.

**NOTE 2.**—The record-keeper will enter in the order-sheet of the record of the case, a note that payment order has been issued, so that a second claim for the amount may not be passed. This note should be signed by that officer and also by the District Judge, or by such judicial officer at headquarters as the District Judge may appoint for the performance of this duty.

**NOTE 3.**—See rule 597, regarding the postage for such documents.

**NOTE 4.**—If the amount certified by the record-keeper of the District Record Room does not agree with the amount stated in the application, the chief ministerial officer of the subordinate Court should require the applicant, if satisfied with his identity, to submit an amended application on which the payment order may be issued.

**NOTE 5.**—For the purpose of this rule the term "record-keeper" includes the ministerial officer who may be placed by the District Judge in charge of the record room in an outlying station, where there is any (*see*, Note to rule 404).

**677.** Where the record connected with an application for payment order has been destroyed under the rules, the Court may, in order to satisfy itself that the amount is due, require the applicant to file an affidavit in support of his application.

**NOTE.**—The application for payment order and the papers filed therewith under the above rule shall be preserved in the Court's office for one year from the date of the passing of the payment order.

**678.** An order of attachment passed by any Court on the money in deposit in a case in the same Court or in another Court, shall, on communication, be forthwith recorded on the order sheet of the case or proceeding concerned under the signature of the presiding Judge of that Court and also against the corresponding entry in the Register of Deposit Receipts under the signature of the Judge in charge. If the record of the case has been despatched to the District Record Room, intimation of the attachment shall be forthwith sent to the Judge in charge of the District Record Room. The Judge in charge shall thereupon cause such information to be noted in the order sheet of the case under the signature of the record-keeper and under his counter-signature.

**NOTE.**—If intimation is subsequently received of the failure or withdrawal of the attachment, the same procedure should be followed in recording the fact on the order-sheet of the case concerned and the Register of Deposit Receipts.

**679.** If the application for payment is found to be incorrect or defective, the accountant shall note the error or defect, and return it, with as little delay as possible, to the applicant for correction by him, or for reference by the applicant to the Court.

#### Payment Orders and Registry.

**680.** If the application is found to be correct, and the deposit has not lapsed, the accountant shall fill up the second part of the application form, post the transaction in the Register of Payment Orders [Form No. (A) 16], number it with its proper index number, and make the requisite entry in the Register of Deposit Receipts. Finally, the application, with the Register of Payment Orders, and the Register of Deposits, shall be laid before the Judge in charge.



## Approval by Judge in charge.

**681.** Before passing the application for payment, the Judge in charge shall satisfy himself, in the first instance, that the requirements of rule 675 have been complied with. He shall further satisfy himself, by personal inspection of his Register of Deposits, that the balance at credit of the particular deposit is sufficient to meet the repayment, and that no order for the attachment of the money has been noted. If the result of his scrutiny is satisfactory, he may sign the order for payment of the amount either from the local treasury or from his Court, as prescribed above in rules 647 to 650 and shall attest with his initials the note of the order of repayment made in the Register of Deposit Receipts. He shall also initial the entries in the Register of Payment Orders [Form No. (A)16]. The payment order shall then be made over to the applicant, after obtaining his dated signature in the remarks column of the Register of Payment Orders, for presentation to the cashier if the money is to be paid in Court, or to the treasury officer, if it is to be paid by such officer.

**NOTE 1.**—When signing payment orders, the Judge in charge should see that undue delay has not been made by the chief ministerial officer or the accountant in dealing with the application, or that preference has not been given to applicants of later dates. [See also, rule 674(3).]

**NOTE 2.**—Deposits in favour of an estate under the management of the Court of Ward should be paid not in cash from the Court, but at the treasury by transfer to the credit of the personal ledger account maintained there for the estate concerned. The payment order should therefore be addressed to the treasury officer and should authorise him to "pay as above by transfer credit to the personal ledger account of Wards estate," or (if the personal ledger account of the estate is maintained at a treasury other than that from which the repayment of the deposit is made, in which case a money order form, duly filled in in favour of the treasury officer who keeps the account for the amount less money order commission, must accompany the application) to "pay as above by transfer credit to post office in order that the amount may be remitted, less money order commission, to the treasury officer," for credit to the personal ledger account of Wards estate.

The above procedure will also apply in cases of payment in favour of privileged landlords who have been permitted to maintain personal ledger accounts of their own in the treasury.

**682.** When the money sought to be withdrawn is in deposit, not in the Court to which the application is made, but in another Court,—as for example, where two or more Courts at one station are combined for the purposes of accounts,—in every such case the duty of the Court to which the application is made shall be merely to receive such application and forward it to the Court which holds the deposit, for examining the record of the case and furnishing a certificate as provided in rule 675, that the applicant is the proper party to receive payment of the amount claimed. In any case in which the amount has been transferred from the credit of the original payee to that of the claimant this fact should be stated. This certificate shall be compared with the Deposit Register in the office of the Judge in charge. Such register, if the sum is shown therein to be in deposit, will inform the Judge whether there is any bar to payment. If there is no such bar, the payment order may be issued by the Judge in charge, and the fact of its issue shall be communicated to the Court upon whose certificate the application was passed, in order to enable it to enter satisfaction for the amount upon the record of the case.

**NOTE 1.**—The certificate should be given on the payment order, that is to say, in the tripartite Form No. (A) 2, Vol. II, at foot of Part I, in the place intended for it and the Note to rule 675 observed; and in recording the payments in the Register of Repayments, particulars may be entered as to the Court under whose orders the payments have been made. (Accountant-General's No. 331-T.B., dated 5th September, 1881, read with his No. 42-T.M., dated 28th April 1882.)

**NOTE 2.**—When money realised under the decree of one Court is attached at the instance of another Court, the application for payment should be made to the Court attaching the money. Such Court, after receiving the application should forward it to the court which holds the money, and if there be no objection to the payment of the money to the applicant, the latter Court should deal with it under this rule, or if the record of the case has been despatched to the District Record Room, under rule 676. The Court so dealing with the application should also report to the attaching Court, or, if the application has been dealt with under rule 676, also the District Court, that the amount claimed has been transferred from the credit of the original payee to that of the claimant.

**NOTE 3.**—When monies in different cases realised under the decrees of one Court, are attached at the instance of another Court in a single case, in case of the withdrawals of the amounts so attached, separate applications should be made.

#### Lapse of Order.

**683.** (1) An order for payment from the local treasury is valid for ten days only, and may not be cashed after the expiry of ten clear days subsequent to the date thereof. An order which has not been paid within ten days as aforesaid may be presented to the Court which issued it, and such Court may re-enface thereupon a new payment order, which shall remain valid for ten clear days immediately after the date thereof. When the last day of any such period of ten days is a day on which the treasury is closed, the order may be cashed on the day on which such treasury re-opens.

**NOTE.** An order for payment of money at the Court should be restricted in its operation to the day of issue. And when money is to be paid immediately, the order of payment should be issued on the cashier of the Court (*vide* Accountant General's No. 152 dated 9th August, 1882.)

(2) All orders as aforesaid should be included in a "Daily Advice List" in Form No. (A)8 to be issued by the Court making the order to the local treasury where the cheque is to be paid. The certificates for refund of the value of court-fee stamps should also be entered in this list (*vide* rule 686 *post*).

(3) When the treasury accounts are closed on the 31st day of March in each year, every order for payment issued on or before that date shall lapse absolutely; and treasury officers are forbidden to cash after the 31st March orders issued on or before that date. An order which has lapsed under this clause cannot be renewed, but a new order may be obtained upon delivering up the old order and making a fresh application under rule 674.

**NOTE.**—Judges should warn persons who apply for orders at the end of March of the effect of this rule, and tell them to wait till April 1st, unless they mean to cash immediately any order that they may obtain.

(4) Immediately after the 31st day of March in each year, the Judge in charge shall ascertain what payment orders issued on or before that date are still uncashed and shall mark them off under his initial in the Registers (1) of Payment Orders, and (2) of Deposit Receipts as "cancelled under rule 683 (3)."

#### Lapsed Deposits.

**684.** When an application is made to draw money at credit under a deposit which has lapsed under rule 734, but the payment of which is otherwise unobjectionable, the accountant shall prepare a special form of application [Form No. (A)4], which, when passed by the Judge in charge after the examination prescribed by rule 681, shall be dealt with under rule 737.

### Refunds under Head (A) of Rule 643.

**635.** When an application is made for the refund of a fine or a miscellaneous receipt [a receipt under head (A), rule 643], the payment order shall be prepared by the accountant in Form No. (A) 5 after checking the application by a reference to the Fine Register or Register of Judicial Deposits (other than civil deposits and peremptory receipts) rule 740); and the Judge in charge at the time of passing the refund order, shall note the repayment against the entry of the receipt in such register. The payment order shall also be noted in the Register of Payment Orders [Form No. (A) 16] and initialled by the Judge in charge. No refund should be made from the receipts on account of sale-proceeds of old stores and materials.

**NOTE 1.**—As regards stamp duty and penalties, see rule 743. While they may be realised in Court, it will be observed that under sec. 39 of the Stamp Act, they can be refunded only by the Collector. Form No. (A) 5 should be used for certificates for refund. For refunds of the value of court-fee stamps, see following rule.

**NOTE 2.**—Refunds under sub-heads (ii) to (vii) of head (A) of rule 643 can be made only through the treasury.

**636.** (1) Application for the refund of the value of court-fee stamps is to be made to the chief ministerial officer, who shall compare the application with the record, and if he finds that a refund is due, shall draft a certificate of refund on the back of the paper to which the court-fee stamps are affixed. The papers shall then be passed on to the accountant, who shall prepare a certificate in Form No. (A) 6 and shall enter the particulars in the Register of Payment Orders [Form No. (A) 16]. The application with the other papers and the register shall then be laid before the judicial officer, who, if satisfied that the proceedings are in order, may sign the certificate of refund on the back of the stamped paper and the certificate in Form No. (A) 6 and initial the entry in the register. The certificate in Form No. (A) 6 shall then be made over to the applicant for presentation at the treasury.

(2) If the record has been despatched to the District Record Room, the application for refund shall be forwarded by the presiding officer to the District Judge and it shall be dealt with by the record-keeper in the same way as chief ministerial officer of the Court.

**NOTE 1.**—Entries in the Register of Payment Order [Form No. (A) 16] in the case of refunds of the value of court-fee stamps must be made in red ink.

**NOTE 2.**—In outlying stations where there is no treasury, the certificate granted by the Court in Form No. (A) 6 shall be presented to the Cashier of the Court if the amount for refund does not exceed Rs. 10 and the cashier shall make the refund out of the permanent advance recouping the amount so refunded by presenting a bill to the treasury accompanied by the certificates granted by the Court. Such payments by the cashier should be charged in the Cash Book (see Note 2 to rule 670).

**NOTE 3.**—When court-fees realised in stamps (e.g., process fees, custody fees, costs of transmission of records, etc.) have not been spent or processes, etc., have not issued, the Court may, on the application of the party concerned, and if it is satisfied that the application may be granted, issue a certificate in Form No. (A) 6 certifying that the party is entitled to a refund of the unspent fees, and the party may present the said certificate to the Revenue authorities in accordance with Rule 35A of the Bengal Stamp Manual.

**NOTE 4.**—Applications for the refund of the value of court-fee stamps on account of unspent process fees, etc., need not be stamped [vide section 19(xx), Court-fees Act].

**NOTE 5.**—In any exceptional case in which the paper to which the court-fee stamps are affixed has been destroyed under the rules for the destruction of records (See rule 458), the Court concerned should, before issuing a certificate for refund in Form No. (A) 6, satisfy itself that the amount claimed is due and record the proceeding on the application for refund, which may be filed.

**NOTE 6.**—The procedure laid down in this rule is for the refund of the value of court-fee stamps when application for such refund is made to a Court which keeps its own accounts (see rule 682). (Accountant-General's No. 324, dated the 16th June 1881.)

Where there are two or more Civil Courts at one station, the Judge in charge, i.e., the officer in whose Court the combined accounts of all the Courts at the station are kept, should sign the certificate of refund (Accountant-General's No. 155-A, dated 30th April, 1881) and initial the Register of Payment Orders.

**NOTE 7.**—A list of the certificates for refund of the value of court-fee stamps issued under this rule should be prepared in Form (A) 8, Civil Rules and Orders, and promptly sent to the treasury [*vide* rule 683 (2) *ante*].

**687.** In so far as the accounts system is concerned, it is invariably necessary to trace each item of payment under the Court's orders back to its corresponding item of receipt; in other words to connect each item of a Court's debit in the treasury with the corresponding item of credit, however far in time the two may be separated from each other. Accordingly the Court must take care to furnish itself and the treasury with the necessary particulars for this purpose.

#### Payments by Cashier.

**688.** (1) In the case of payment orders directed to the cashier, the payment must be entered by the cashier in the cash book, the payment order being retained by the cashier as his voucher.

(2) All repayments from peremptory receipts shall be made by the cashier only on production of a certificate of the Court which directed the amount to be received on an application made for the purpose, that the repayment sought should be made to the claimant. This certificate is to be retained by the cashier as his voucher and preserved for five years.

**NOTE 1.**—The cashier should cancel the vouchers, as soon as he pays them, by writing on the face "Paid" with his initials. A "Paid" stamp should not be used, as that indicates the subsequent discharge at the treasury.

**NOTE 2.**—Payment of Civil Court the deposits out of miscellaneous receipts due to Government when receipts on account of Civil Court deposits in hand fall short of the amount passed for payment is not permissible under T. O. 7. At outlying stations when it is inconvenient for a claimant to proceed to the treasury to obtain repayment of a deposit, the Judge in charge of the accounts may pay him in cash, provided there are in the Court funds sufficient whether of current deposit receipts or of the office permanent advance (*vide*, rule 1 to Art. 215, C. A. Code, Vol. I, and rule 652 *ante*).

## CHAPTER 32

[PART VI]

### ACCOUNT-KEEPING, REMITTANCE AND DEPOSIT REGISTERS.

#### 1. Account-keeping.

##### Courts near Treasuries.

**689.** In Courts situated within daily reach of a treasury, the accountant shall, after the close of business each day, make the proper entries in the Treasury pass book [Form No. (A) 17], showing in detail the sums received from and paid to the public in cash. The receipts shall be entered on the right-hand side, and are to consist of the sums entered in column 5 of the first part of the Register of Chalang [Form No. (A) 14] headed "Amount received in Court. The payments shall be entered on the left-hand side, and are to consist of the sums shown in column 5 of the Register of Payment Orders [Form No. (A) 16] headed "Amount cashed in Court."

**NOTE.**—The remittances to the treasury at the close of each day, as well as each payment to the public, must be entered in column 3 of the form of pass-book No (A) 17. To facilitate the calculation of the amount to be remitted to the treasury at the close of each day's business, two lines are provided in the form, one to show the total of receipts and payments at the court, and the other, the total for the day according to the receipt and payment sides. The receipts and payments at the Court being first entered and added up, the difference between the total of receipts and that of payments will, if the receipts exceed the payments, be entered on the left side as remittance to the treasury, or if the payments exceed the receipts on the right side as remittance from the treasury. The total for the day will then be made up for both sides which will agree together. The number of the chalan or payment order, on the back of which the amount to be remitted to, or received from, the treasury is noted (see, note to rule 693) may be shown against the entry made below the total of payments or receipts, but the head of account need not be noted in the pass-book against the entries, nor need the entries be initialled by the treasury officer.

**690.** Every chalan recorded in the first part of the Register of Chalang and every payment order for money received or paid at Court under heads (A) and (B) of rule 643 shall be shown in detail in the pass book, and the head of account shall be noted against each, so as to enable the treasury officer to bring the transactions in detail under their proper heads and classify them correctly.

Page 233, Rule 690—

After Note 3 to the rule insert the following rule:—

**690A.** (1) At the end of the month, the Judge in charge shall send to the treasury a memorandum, in the following form, relating to transactions

in charge shall examine the accounts by comparing (1) the registers of Chalang and Payment Orders (amounts received and paid in Court) with the cashier's Cash Book; (2) the Treasury pass book, with both; and (3) the balances shown in the Peremptory Cash Register, with those shown in the general abstract cash book. He shall also verify daily the balance in the hands of the cashier, and see that it agrees with the balances shown in the cash books.

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Memorandum

## 2. Remittance.

### Daily Remittances.

**692.** (1) The balance of the cashier's account in respect of peremptory receipts should be observed every day in passing the cash book. To prevent excessive accumulation under this head, the Judge in charge shall fix the maximum amount that may be allowed to remain in the hands of the cashier on account of peremptory receipts in consideration of the requirements of the station and the amount of security furnished. Whenever, the balance shown in the Peremptory Cash Register exceeds the maximum so fixed, the Judge in charge shall cause the excess to be transferred to civil deposit. The oldest item or items not likely to be soon repaid should be transferred to civil deposit when transfers are thus effected. Amounts so transferred shall be treated in the same manner as money received in Court, and the date, number of chalan and the total number transferred shall be entered in the cashier's cash book both on the credit and the debit sides, details of such transactions being also entered on the credit side of the Peremptory Cash Register. A single chalan in Form No. (A) 1, shall be prepared under rule 672 by the accountant and signed by the cashier for the sum so transferred, specifying in detail on the back of the chalan the items, numbers and amounts of the individual receipts of which the sum transferred is composed and the individual items noted by the accountant in the Register of Deposit Receipts, item by item, to facilitate check at the time of repayment of deposits. Columns 1, 2 and 3 of Part I of chalan will be left blank; in column 4 will be entered "peremptory cash as detailed on the reverse" and in column 6 will be entered the number of each item in the Peremptory Cash Register. Similar entries will be made in columns 3 and 4 of Register No. (A) 14—Chalan Register—and in columns 4 and 5 of Register No. (A) 18 (i) or 18(ii) as the case may be. Should the money be subsequently claimed, it shall be paid to the claimant according to the procedure prescribed for the payment of deposits, the certificate on the payment order required under rule 675 being given by the cashier after reference to the Peremptory Cash Register where the payment order should be noted and the entry signed by the Judge in charge. If such sums remain in deposit for three years they must be carried to credit of Government under rule 734, relating to lapsed deposits. For payment of any item of peremptory receipts from lapsed deposits the procedure laid down in rules 737 to 739 should be followed.

(2) The total of the peremptory cash in the hands of the cashier should always agree with the total of all the items of peremptory receipts appearing in the Peremptory Cash Register as neither paid nor refunded nor transferred to civil deposit. In order to exercise an effective check over this a list of undisbursed amounts shall be prepared half-yearly and verified with the actual cash balance in the hands of the cashier. If at any time the totals are found to disagree, the Judge in charge should forthwith make an investigation and get the discrepancy reconciled. The Judge in charge shall certify that the total of the list tallies with the actual cash balance.

**NOTE 1.**—All unpaid amounts of peremptory receipts which were received during the financial year preceding the year which has ended, shall on the 1st of April be transferred to civil deposit in the manner prescribed in this rule.

**NOTE 2.**—If for any special reason, e.g., on a sale day, the amount of cash balance in the cashier's hand exceeds Rs. 5,000 in the district headquarters and Rs. 2,500 in other stations, special arrangements should be made for guarding the cashier's strong room.

**NOTE 3.**—Applications for payment orders for refund of unspent amounts in the peremptory cash transferred to civil deposit need not be stamped with any court-fee.

--- (1) Having initialled the accounts of the day and signed the cash book, the Judge in charge shall send the pass book to the treasury (or to a branch bank, *vide* note 2 to rule 697) together with the net amount in cash, and a single chalan for the total receipts under Civil Court deposits, and separate chalans for receipts falling under the sub-heads (i) and (ii) and consolidated chalans for the receipts under each of the sub-heads (iii) to (vii) of head (A) in rule 643, as well as all payment orders. This remittance must be entered in the cash book as a payment of the day on which it is made. Separate chalans received from parties in respect of deposit receipts and receipts under the sub-heads (i) and (ii) of head (A) should be retained in the Court.

(2) It is important that this be done before the business of the new day commences, and the cashier should have in hand, after each such remittance, only the balance of the peremptory cash transactions and the other balances referred to in rule 673.

**NOTE.**—The total of chalans of the day for money received in cash by the Court, minus the total of payment orders cashed, at the Court, will represent the balance of cash to be remitted to the treasury. The amount so remitted will be noted on the back of the last chalan entered in the pass-book [Form No. (A) 17], in order to avoid the separate chalan which otherwise would be required by the treasury officer.

#### Courts not near Treasuries.

**694.** At out-stations, the cash book shall be balanced as prescribed above, and the balances, both that of the receipts and payments under heads (A) and (B) and that of peremptory transactions, shall be carried forward to the next day's account. The accounts shall be balanced, compared, and signed every day in the manner prescribed in rule 691, save that instead of comparing the Treasury pass book with the accounts, the Judge in charge shall see that the Court balances are brought forward, and shall, ascertain that the money is actually in possession of the cashier.

#### Periodical Remittances.

**695.** On the day fixed by the District Judge for closing the accounts of the month (*see*, rule 709), and from time to time as occasion may arise (*see*, rule 651) the Treasury pass book shall be made up, showing all receipts and payments at the Court since the last remittance to the treasury (or to a branch bank, *vide* note 2 to rule 697). Its accuracy having been tested, it shall be forwarded to the treasury with a single chalan for the total receipts under Civil Court deposits and separate chalans for receipts falling under the sub-heads (i) and (ii) and consolidated chalans for receipts under each of the sub-heads (iii) to (vii) of heads (A) in rule 643, as well as all payment orders. If the receipts have exceeded the payments, the cash excess shall be sent to the treasury; if the contrary, the cash deficit shall be received from the treasury; in either case the cashier will have, after the completion of the transaction, in addition to the balance of peremptory cash transactions, only the permanent advance allowed to the Court for carrying on its payments at a distance from the treasury.

**NOTE.**—As the treasury does not keep a detailed record of the deposit receipts, it will suffice if the gross receipts are communicated to it with a single chalan and the separate receipts received from the parties are retained in the Court.

to the rule [as amended by Circular Order No. 1 (Civil) of  
substitute the following:—  
**Note 2.**—In case of any remittance to a branch bank direct, it should  
be seen that the receipt of the remittance is acknowledged in the  
pass book by the Head Cashier of the bank.”  
3, dated the 27th November, 1963. Circular Circular No. 3 (Civil) of  
1961.]

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**Page 235, Rule 697—**

For the existing Note 2 to the rule *substitute* the following:—

**“Note 2.**—In case of any remittance to a branch bank direct, it should be seen that the receipt of the remittance is acknowledged in the pass book by the Agent when the amount remitted exceeds Rs. 10,000 and by the Head Cashier of the bank when it does not exceed Rs. 10,000”.

By order of the High Court,  
B. K. PANDA,  
*Registrar, Appellate Side.*

Memo. No. 1322R.O. to 1336R.O.

Copy forwarded to the District Judge of...../Chief Judge, City Civil Court, Calcutta, for information and guidance and for communication to and guidance of the courts subordinate to him.

HIGH COURT,  
ENGLISH DEPARTMENT,  
CALCUTTA;

The 24th February, 1960.

By order of the High Court,  
P. K. BHATTACHARYA,  
*First Assistant Registrar.*

**Treasury Advice List.**

**700.** At the close of business each day, the treasury officer, whether sadar or subdivisional, shall prepare Advice Lists, in Form No. (A) 9, of all such chalans and payment orders of each Judge in charge as have been brought upon the treasury accounts in the course of the day, and shall forward them to such Judges in charge respectively together with the chalans referred to in clause (2) of rule 664. In these lists shall be entered in detail such chalans and payment orders as have been received or paid at the treasury or sub-treasury in cash, while those brought into the treasury account from the pass book (rule 693) shall be included in a



single total on each side, with the description "as per your pass book dated—."

**NOTE 1.**—The despatch of daily Advice List from the treasury should be insisted upon by the Judge in charge and any delay in the matter or non-observance of this rule should be promptly brought to the notice of the authorities.

**NOTE 2.**—If the Court is close to the treasury, so that the Judge's registers referred to in rule 702 can be sent daily to be compared and initialled by the treasury officer, this procedure may be adopted in lieu of the daily Advice List, if found more convenient.

**701.** The list prepared at the sadar treasury for the District Judge shall include, besides the moneys received and paid on account of the Judge's own Court, those transactions also which belong to his subordinate Courts. These amounts, however, need not be entered in detail but may be included in a single total of receipts and of payments for each Court, including pass book transactions brought into account..

#### Comparison by Judge.

**702.** On receipt of this Advice List, the Judge in charge shall cause the particulars of the chalans and payment orders shown in it to be compared with the details recorded in his Registers of Chalans and Payment Orders [Form No. (A) 14 and No. (A) 16], and shall further cause the date of actual credit and payment, as certified by the treasury officer, to be entered in the column prescribed for that purpose.

**703.** These entries must be initialled by the Judge in charge when he checks the posting in the Deposit Registers, as prescribed in rule 705.

### 3. Deposit Registers.

#### Separation of Petty Deposits.

**704.** Two Registers of Deposit Receipts shall be kept in Forms No. (A) 18 (i), (A) 18 (ii), and two of deposit repayments in Forms No. (A) 19 (i), (A) 19 (ii). One of these shall be termed the Register of A deposits, and there shall be entered therein all deposits originally exceeding Rs. 5. The other shall be termed the Register of B Deposits, and there shall be entered therein all deposits not originally exceeding Rs. 5. Both registers shall be kept in the same form and shall be posted in the same manner, but with separate series of numbers (see next rule), distinguished by the initial letters A and B, respectively.

#### Posting.

**705.** On the day on which the Treasury advice list is received (rule 700) the deposit register shall be posted. Transactions at the treasury shall be written up from the advice list below the entries made under rule 655 on the date on which the advice list is received. The date of payment into the treasury and also the date of posting the transaction shall be entered in the deposit register. The entries in the advice list shall be compared with those in Registers Nos. (A) 14 and (A) 16.

**NOTE.**—The date of granting the payment order should be entered on the repayment columns in the Register of Deposit Receipts, and the date of actual payment in column 4 of the Registers of Deposit Repaid.

#### Registers of Receipts.

**706.** All items of deposit in these registers must, as directed above, be numbered in an annual consecutive series of numbers commencing on 1st April, and ending with the last day of March in each official year. Only the first eight columns shall be filled in at first, the other columns being intended for the record of subsequent repayments.

## Notes of Claims, etc.

**707.** As it is important that the Deposit Registers in the accountant's department should set forth in respect of each item all information necessary in order to deal at once with applications to draw money, all attachment, processes, and transfer orders relating to decrees, and all orders as to the substitution of parties which affect decretal and other moneys in deposit shall be noted at the time in the Deposit Register. The Sheristadar, or some other specified subordinate under his supervision, shall be made responsible for this duty.

**NOTE 1.**—It will be the duty of the clerk in charge of the record containing the order regarding attachment, transfer, substitution, etc., to send it to the accountant as soon as possible after he receives it, for being noted in the Deposit Registers. But this does not relieve the Sheristadar of the responsibility for seeing that the duty has been performed.

**NOTE 2.**—Whether the Sheristadar's responsibility is or is not to end with the communication to the accountant or accountant's muharrir is a matter left to the discretion of each Court, but some specific order should be recorded.

## Registers of Repayments.

**708.** The Registers of deposit repayments [Forms No. (A) 19 (i) and (A) 19 (ii)] shall be posted from the Treasury Advice List and the Payment Order Registers, as directed above.

## Closing for the Month.

**709.** (1) The Registers of deposit receipts and deposit repayments in Courts at a sadar station shall be totalled and closed on the last day of each month upon which the sadar treasury remains open, and in subdivisional stations on the day on which the accounts of the subdivisional treasury are finally closed for the month, in such a way that the period and the transactions included in the Court's books and returns may correspond exactly with those included in the treasury books and returns. At outlying stations at which there is no sub-treasury, the Register of Deposit Receipts shall be closed on such date as may be fixed by the District Judge so that the monthly statements may reach his office before his accounts are closed for the month.

(2) Care must be taken to make the final remittance to the treasury in such time that it may be entered in the accounts of the treasury for the month to which it belongs.

(3) In each of the Registers of Deposit receipts prescribed by rule 704, a *plus* and *minus* memorandum must be drawn up at the end of the month's entries in the following form:—

Balance of deposits from last month	...	•	...	...
Received during the month, as per register	...	...	...	...
			Total	•...
Repayment, as per register	..	...	...	...
Balance of Deposits at end of month	...	...	...	...

## CHAPTER 33

### CONTROL OVER COURTS, RETURNS AND LAPSED DEPOSITS.

#### 1. Control over Subordinate Courts.

##### Responsibility.

**710.** Every Judge is responsible for all payments of deposits made on his certificate or under his orders. In the case of receipts and payments of petty or B deposits no detailed check is exercised over his proceedings, the accounts which he is required to render of these showing totals only. In the case of A deposits, however, all sums received, and not paid out during the month in which they have been received, and the balance of such of these deposits as have been partly paid out, must be reported to the District Judge, and must be included in that officer's accounts, and in his return to the Accountant-General.

**NOTE.**—If the District Judge thinks it absolutely necessary, he may delegate the duty of passing chalans to the chief ministerial officer of his Court, and place any of the officers subordinate to him in charge of accounts, in the same way as a Deputy Collector is placed in charge of a treasury, but on the distinct understanding that the District Judge will not be relieved of the responsibility for the due accounting of all money received and paid. All returns will be signed by the District Judge. (Accountant-General's No. 141-A., dated 26th April, 1881.)

##### Daily Return of Subordinate Court.

**711.** Every day, after the Treasury Advice has been received, and the Deposit and other registers have been written up and checked with it, two statements showing the transactions of the date to which it refers shall be prepared by the Judge in charge and forwarded to the District Judge. The first of these statements [Form No. (A) 10] shall show the total amount of the entries in the Deposit Registers and the totals of all other transactions brought on the registers (*see* rule 777). The second shall be an extract from Part I of the Register of Deposits Repaid [Form No. (A) 19], giving the particulars of repayments on account of deposits received during the previous months. At the foot of the first statement the Judge in charge shall certify "that he has examined the Registers of B Deposits and found them to be written up to date and to be in order."

**NOTE 1.**—These returns are intended to exhibit actual receipts and payments, which are therefore to be compiled from the Deposit Register, and not from registers of chalans and Payment Orders. •

**NOTE 2.**—The subordinate Courts referred to in rules 710 and 711 are those which keep their own accounts and the accounts of other Courts as well, *vide* rule 682 (Accountant-General's No. 141-A., dated 26th April, 1881.)

**NOTE 3.**—The advices of the payments of deposits appertaining to the subordinate Courts at the sadar station should be issued from the District Judge's Court. (Accountant-General's No. 141-A., dated 26th April, 1881.)

**712.** At out-stations some delay in submitting the daily returns is unavoidable, but this delay should not exceed the time necessary for the Treasury Advice List to reach the Court. The date on which the returns are actually signed should be noted on them by the Judge in charge.

**Verification by Judge in charge.**

**713.** At the time of signing the returns, the Judge in charge should have before him the Registers of Chalang and Payments Orders, the Registers of Receipts and Payments of Deposits, and the Treasury Advice List; and, after comparison, he should attest the entries in column 8 of Registers No. (A) 14 and No. (A) 16 by placing his initials in column 9, and the entries in the Registers of Deposit Receipts and Payments by placing his initials in columns 7 and 13, respectively.

**Examination by District Judge.**

**714.** The statements furnished by the subordinate Court shall when received in the District Judge's office, be compared with the corresponding Advice List supplied to him by the treasury officers, under rule 701. In the case of out-stations, the totals for the whole month supplied by the Judge in charge must agree with the totals for the whole month supplied by the treasury officer, if the rules regarding periodical remittances have been correctly followed. In the course of the month the former totals will ordinarily exceed the latter, and the difference must be taken to represent cash transactions advised by the Court, but not yet brought on the treasury books. In the case of Courts near treasuries no such discrepancies should occur if the rules are properly observed. When any such are noticed, immediate steps must be taken, under the District Judge's orders, to reconcile them.

**Judge's Register of Totals.**

**715.** After examination, the totals of deposits received and paid shall be posted into a register to be kept by the District Judge in Form No. (A) 21. This register contains two sets of columns, one set relating to A deposits and the other to B deposits. Separate portions of the register for the month must be allotted to each subordinate Court, that is, for each subordinate Court a number of pages, according to the probable work, must be assigned in the leaves devoted to that particular month. The entries in respect of each subordinate Court will thus come continuously and in order of date and they must be totalled at the end of the month.

**716.** In the portion of the register which relates to B deposits, a column has been provided for a daily balance which must be struck by adding together the preceding day's balance and receipts, and deducting the payments. The object of the daily balance is to afford the District Judge a ready means of controlling subordinate Courts in the receipt and payment of small deposits, as any excess of payments over receipts will be at once detected.

**Posting Repayments of A Deposits.**

**717.** (1) Taking up next the detailed Daily Register of Deposits Repaid [Form No. (A) 19], the repayments must be posted against the corresponding entries in the Judge's Daily Register of Deposits received [Form No. (A) 18], and must be initialled by the District Judge, or, under his orders, by the chief ministerial officer of his Court in the same manner as repayments authorised by himself. The extracts of repayments sent by subordinate Courts (rule 711) shall form part of his Register of Deposit Repayments [Form No. (A) 19].

(2) As each payment is noted in the Judge's register, the district number (rule 721) against which the payment is charged must be noted in the subordinate Court's return.

**NOTE.**—In noting the repayments, care should be taken to see that the amounts thus reported as repaid are actually repayable, and that the amounts which should be credited to Government are not repaid to individuals.

#### Monthly Return.

**718.** (1) At the end of the month there shall be furnished by the subordinate Courts to the District Judge a statement of all A deposits received, but not wholly repaid during the month. This statement will be an extract from the Register of Deposit Receipts [Form No. (A) 18], omitting the items which have been wholly repaid during the same month. Of deposits received and partially repaid in the same month the unpaid balance only is to be shown in this statement. The dates of despatch from the subordinate Court and of receipt by the district Court shall be noted on this statement.

**Explanation.**—An A deposit, the balance of which has been reduced below Rs. 5 by a payment made in the same month, is to be included among the A, and not among the B deposits.

(2) On the 31st March of each year the subordinate Courts shall, in addition, submit to the district Court a certificate that all uncashed orders to be cancelled under rule 683 (3) have been marked off in their Registers.

#### Plus and Minus Memorandum.

**719.** There shall be appended to the monthly statement of deposit receipts a *plus* and *minus* memorandum in the following form:—

Balance of last month—					Rs. A. P.
Amount of A deposits received during the month—					
Repaid during the month	...	...	...	...	
Not repaid during the month	...	...	...	...	
Amount of B deposits received during the month—					
Repaid during the month	...	...	...	...	
Not repaid during the month	...	...	...	...	
				Total	...
Amount of A deposits repaid during the month—					Rs. A. P.
Received in all previous years	...	...	...	...	
Received last year	...	...	...	...	
Received during current year—					
Previous months	...	...	...	...	
Current month	...	...	...	...	
Amount of B deposits repaid during the month—					
Received during 19 -19	...	...	...	...	
Received during 19 -19	...	...	...	...	
				Total	...
Balance of Deposits Outstanding					...

*Certificate.*

Certified that, on a comparison of treasury advices with postings therefrom in the Registers of Chalcans, of Payment Orders, of Deposit Receipts, and of Repayments, the amounts entered above as recieved and paid are correct.

NOTE.—The repayments of B deposits received in the year of account, and in the year next preceding, should be shown separately.

**Examination by District Judge.**

**720.** On receipt of the monthly statement and the plus and minus memorandum, the register [Form No. (A) 21] shall be compared therewith. First, as regards A deposits, the total of the column headed "Repaid on account of current month" should agree with the amount shown in the *plus* and *minus* memorandum; and when this amount is deducted from the total of the column headed "Total amount received", the balance ought to agree exactly with the total of the statement of outstanding A deposits received from the Court to which the figures relate. Second, as regards B deposits, the balance itself can be tested in detail only once a year, when the yearly statement under rule 731 is received; but every month the difference between the opening and the closing balance should be equal to the difference between the receipts and payments reported in the *plus* and *minus* memorandum.

**Posting Receipts of A Deposits.**

**721.** The subordinate Courts' monthly detailed statement of A deposits received shall be attached by the District Judge to his own Register of Deposits received, after he has closed the accounts of the Civil Courts at the sadar station. The District Judge will also number the deposits in the subordinate Courts' return in continuation of his own series.

NOTE.—The District Judge should examine the receipts, so as to see that no item has been improperly held in deposit, and if he finds amounts so held which should be credited to Government, he should direct the subordinate Court accordingly.

**722.** The District Judge's Registers of Deposits exceeding Rs. 5 received and repaid thus include each month not only those of his own Court, but also of all subordinate Courts, excepting only the sums received and repaid in such Courts during the same month.

**2. District Monthly Returns of Deposits.****Returns of Deposits Received.**

**723.** On the 12th of each month an Extract Register of Deposit Receipts exceeding Rs. 5 shall be prepared by the District Judge in Form No. (A) 13, and forwarded to the treasury officer for transmission after a comparison with his cash accounts, to the Accountant-General. This extract register will be a copy of the entries made during the month in his register [Form No. (A) 18], and will contain all such items of more than Rs. 5 each as were deposited in his own Court and in Courts subordinate to him, omitting all those which were wholly repaid during the month, and showing, in the case of those partially repaid during the

month, the unpaid balance only. The sadar Court entries should appear first, then,—after a line or break,—the entries of each subordinate Court separately headed by the name of the subordinate Court. At the foot of this register, deposits received and repaid during the month and deposits received for sums of Rs. 5 each and less, are to be shown in separate totals for each Court without details. The extract register should be despatched punctually on the 12th of the month, unless in the case of the larger districts a later date is fixed. The whole of the entries for each Court should be consecutive and separated from those of the other Courts by a space and heading.

#### Returns of Deposits Repaid.

**724.** A monthly extract from his Register of Deposit Payments [Form No. (A) 19] of sums above Rs. 5 shall be forwarded in the same form by the Judge to the treasury officer for transmission, after comparison with his lists of payments, to the Accountant-General. The District Judge shall include in this extract (1) the details of repayments on account of deposits of previous months, whether made in his own Court or entered by him from the statements of subordinate Courts (rule 715), (2) a single total for each Court of the repayments of the current month's deposits, whether made at the district or subordinate Courts, which must agree with the total of receipt on the same account; (3) the totals for each Court of the repayments on account of deposits Rs. 5 and less received during the year of account and the year next preceding.

**725.** Like the Extracts Register of Receipts, this return will keep each Court's entries in separate series. The extract will be prepared on the same printed form as the register, and should be posted as illustrated below:—

#### Illustration.

Details of deposit.			Date as to present repayment.		No. of payment voucher.
Date of receipt.	No. as per Register of Receipts.	Amount or balance of deposit.	Date of cashing payment-order, whether at Court or at Treasury.	Date of granting payment-order as per Court's Register.	
1	2	3	4	5	6
		<i>Court A.</i>			
		Rs. a. p.			
7th September 1898 ..	..	15 8 0	3rd September 1901.	2nd September 1901.	176
3rd January 1901 ..	..	6 12 6	"	"	177
7th June 1901 ..	..	108 10 0	"	3rd September 1901.	178

Amount repaid.	Received in all previous years.	Received last year.	Received during current year.		Initials of Accountant.	Initials of Judge in-charge.	Remarks.
			Previous months.	Current month.			
7	8	9	10	11	12	13	14
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.			
....	15 8 0	..	..	..			
....	.	6 12 6	..	..			
....	..	..	108 10 0	..			
Total ..	15 8 0	6 12 6	108 10 0	..			
Add—Repayment of deposit of current month.	..	..	..	29 11 8			
Add—B deposits repaid.	9 6 0	3 8 0	9 3 0	6 3 0			
Total Court A ..	24 14 0	10 4 6	117 13 0	35 14 8			

#### Plus and Minus Memorandum.

**726.** (1) A plus and minus memorandum in the form prescribed in rule 719, but including the figures of the subordinate Courts, as well as those of the District Judge's own Court, shall be appended to the statement of deposit receipts.

(2) This *plus* and *minus* memorandum is to show as repayments the actual repayments at the treasury, and is further to show the treasury balance outstanding.

NOTE.—It will be found convenient to keep in a separate register a copy of this *plus* and *minus* memorandum, with further memoranda of the details from which the figures have been arrived at. It is important that there should be no difficulty at any time in reconciling the figures of the Court with those of the treasury.

### 3. Annual Clearance Register of Deposits.

#### Clearance Register.

**727.** (1) At the end of each year the Registers of A Deposits received in the next preceding year shall be closed by transcribing into the last column, headed "Transferred to Clearance Register", every balance which exceeds Rs. 5. An annual Clearance Register shall then be drawn up in Form No. (A) 20 showing all these balances against their original numbers showing, in other words, all the unpaid balances of A deposits of the preceding account year next but one. For example, the Clearance Register of April 1923 will show all unpaid balances of A deposits received in 1921-22.



(2) Of balances which do not exceed Rs. 5, a separate list shall be made out under rule 734 below.

**728.** The items in this account having been carefully compared with the corresponding balances in the original Register of Deposits received [Form No. (A) 18], the last named document shall be laid aside, and future repayments recorded only in the Clearance Register.

**NOTE.**—If against any of the items transferred to the Clearance Register, a repayment order has been issued and cancelled under rule 683(3), a note to that effect must be made in the Clearance Register, so that, if application for repayment is again made, an order may not be issued without recalling the original cancelled one.

#### Return by Subordinate Courts.

**729.** A copy of the Clearance Register shall be sent by the subordinate Courts to the District Judge, and by him carefully compared with the entries in his Register of Receipts. Any discrepancies found must be investigated and corrected.

#### Return by District Judge.

**730.** The clearance register of the District Judge necessarily includes the items in the several Clearance Registers of the subordinate Courts, and a copy of it shall be sent to the Accountant-General. The due date for its despatch shall be the 30th April, by which time the Judge should have received and compared the Clearance Registers of his subordinate Courts.

#### Verification of Petty Deposit Balance.

**731.** In order to verify the balance of B deposits, each Court shall make a list of the unpaid balances of receipts of the past twelve months, and, by actual summation of these balances, find the total amount outstanding on account of the past year's deposits. Each Court is required to submit, along with the Clearance Register of A deposits, the list of unpaid balances of B deposits prepared by it and a certificate that the balance of B deposits of the past year has been found by actual summation to be Rs.

**732.** The balance found under the last rule, together with the total of the list prepared under rule 734 (2), must equal the total balance of petty deposits on March 31st, and must be so verified—

(i) by each Court with the forward balance in the *plus* and *minus* memorandum;

(ii) by the District Judge with the balances of the subordinate Court brought forward in the Register No. (A) 21.

**733.** The District Judge, having verified the balance certificates of the subordinate Courts, shall endorse each with the certificate "**Examined and found correct**", and shall certify the fact of having done so upon the statements of lapsed deposits sent to the Accountant-General under rule 735.

**NOTE.**—The District Judge shall submit a certificate to the Accountant-General in the following form, along with the annual returns—"Certified that I have satisfied myself from an examination of the records of this office that the registers of B deposits of this Court as well those of the subordinate Courts are kept up to date and are in order; that the daily certificates from the subordinate Courts are regularly received and that the balance on the 31st March as certified to by the subordinate Courts agrees with those shown in the registers maintained in this office for the past year."

#### 4. Lapse of Deposits.

##### Lapse of Deposits.

**734.** On 31st March of each year, the following unpaid balances of deposits lapse to Government, and are to be so written off in the Clearance Register and Registers of Receipts, respectively:—

(1) of A deposits, *first*, all balances of deposits of the last account year but one which do not exceed Rs. 5, and are therefore not carried forward under rule 727 into the Clearance Register; these balances should be marked "Lapsed" in the Register of Receipts: *secondly*, all balances of deposits outstanding over three complete years—that is, all balances in the Clearance Register prepared two years before; these are to be marked off in the last column of the Clearance Register;

(2) of B deposits, the balances of all deposits outstanding over one complete year, that is, the balances which, in the case of deposits over Rs. 5, are transferred to Clearance Register under rule 727; these are to be marked off in the last column of the Registers of Receipts.

*Example.*—The balances which lapse on 31st March, 1922 are—

- (a) all balances not exceeding Rs. 5 of A deposits received in 1920-21.
- (b) all balances of A deposits received in 1918-19.
- (c) all balances of B deposits received in 1920-21.

##### Statements of Lapsed Deposits.

**735.** (1) Three statements of the balances to be written off shall be prepared in Form No. (A) 12, one for each of the three classes (a), (b) and (c), specified in the *Example* under rule 734. These statements shall be submitted along with the Clearance Register. Those of the subordinate Court must be compared by the District Judge with his own registers, and discrepancies, if found, must be reconciled. Those of the District Judge must include, under the District Judge's numbers, the lapsed balances of A deposits of the subordinate Courts.

(2) As regards B deposits, the statements received from the subordinate Courts must be copied into the District Judge's statement, with a separate total for each Court, the originals being filed for future reference.

*NOTE.*—The Note under rule 728 applies to these statements of lapsed deposits also.

##### Correction of Balance.

**736.** These statements must all be submitted during April, and the totals thereof must be deducted by a separate entry from the *plus* and *minus* memorandum, drawn up at the end of April, so that the *plus* and *minus* memorandum may show only the balance actually outstanding upon the registers of the Court concerned.

##### Refund of Lapsed Deposits.

**737.** When payment of a deposit lapsed under rule 734 is required by a person entitled thereto, application shall be made through the District Judge, who shall examine the claim, and, if he finds it correct, shall forward an application in Form No. (A) 4 to the Accountant-General. Several deposit numbers may be included in a single application, if they are payable to the same person. The Accountant-General's letter of

authority, when received, shall be noted against the items in the Clearance Register (or original register in the case of a B deposit), so as to prevent a second application. This letter shall then be passed for payment at the treasury, as prescribed in the form. No other record of these refunds is necessary; and such payments are not to be shown in the *plus* and *minus* memorandum.

**738.** All applications for refund of lapsed deposits should be entered in a separate register in the accompanying form, before submission to the Accountant-General, West Bengal, for sanction:—

Date of issue.	Serial No.	Name of Applicant	No. and date of deposit.	Date of lapsed deposit.	Amount claimed.	No. and date of Accountant-General, West Bengal's authority.	Remarks.

**NOTE.**—Dated signature of the person receiving the authority should be taken in the remarks column.

**739.** If the letter of authority received from the Accountant-General is not claimed by the payee within twelve months from the date thereof, it shall be returned to the office of origin.

## CHAPTER 34

### SUPPLEMENTARY AND MISCELLANEOUS RULES.

#### 1. Supplementary rules as to receipts under head (A) of rule 643.

**NOTE.**—For rules as to refunds allowed under sub-heads (i) to (vii) of head (A) of rule 643, *see*, rules 685 to 687.

#### Registers.

**740.** Every Judge in charge shall maintain a register of judicial deposits other than civil deposits and peremptory receipts (*e.g.*, judicial fines, stamp duties and penalties, miscellaneous receipts, etc.) and refunds therefrom in Form No. (A) 22. In this register, all receipts are to be posted which do not come under head (B) (deposits) or head (C) (peremptory receipts) of rule 643. The entries shall be made and checked in the same way as the entries in the Register of Deposit receipts of the subordinate Courts.

**741.** Every Court under whose decree or order receipts under sub-heads (i) to (iii) of head (A) of rule 643 are realised shall maintain a register in Form No. (A) 32. The entries in the register shall be initialled by the presiding officer of the Court at the time of signing the order-sheet.

#### Credits to Government.

**742.** It is the duty of every Judge to see that sums which are in deposit, but which under any rule or law are forfeited, or become the property of Government (*e.g.*, earnest-money forfeited, or intestate property unclaimed), are duly credited to Government. In every such case there shall be prepared simultaneously (1) a payment order addressed to the cashier and directing payment of the deposit "by transfer as per chalan No. \_\_\_\_\_ of this date," and (2) a chalan crediting it to the proper head. Such payment order and chalan shall be registered and dealt with in every way as if cash were paid out of and received into

#### Receipts under sub-heads (i) and (iii) to (vii) of Head (A) of Rule 643.

**743.** (1) With regard to stamp duty and penalties, attention should be given to secs. 39, 45 and the other sections in Chapter IV of the Indian Stamp Act, 1899, as amended by the Bengal Stamp (Amendment), Act, 1922. The duty and the penalty must always be separately credited.

(2) Loose forms of the Register (R) 19 shall be used for the certificates to be sent to Collectors under sec. 38 of the Stamp Act on account of duty and penalty levied by Civil Courts on instruments which, though originally unstamped or insufficiently stamped, may be admitted under the provision of secs. 35 and 37 of that Act.

**744.** With regard to unclaimed property of intestates or others, it will be seen from the form that register No. (A) 22 deals only with receipts under this head which have remained in deposit for the prescribed

period. A register showing the property in detail must be kept in Civil Courts in Form No. (A) 27. ...

**NOTE 1.**—Any cash belonging to an intestate's estate which may be received in Court, from whatever source derived, must be paid into the treasury at once, and no such cash must be allowed to remain in the hands of the nazir.

**NOTE 2.**—On the receipt of unclaimed property of persons dying intestate, the nazir must make the requisite entries in the register in Form No. (A) 27, Volume II, and these entries must be compared with the police chalan by the Sheristadar and the accountant. If cash forms part of the property or if part of the property, being perishable, is sold before the expiry of the year prescribed by law, such cash or sale-proceeds must, after entry in the register just mentioned, be put in deposit till the time arrives for paying them over to claimants or crediting them to Government.

**NOTE 3.**—When any property in the custody of the Court is sold, the sale account must invariably be checked with the register by the Sheristadar and the accountant, and the Judge must from time to time test the work of his subordinates by personally examining the sale accounts in some cases taken at random.

**NOTE 4.** The cost of conveying intestate property to the Court should be paid from the permanent advance and the same charged in the contingent bill, subject to reimbursement from the eventual proceeds of the sale of the property, or, in cases where a claim to heirship is established, either by payment by the heir before the property is delivered to him, or by the sale of such portion of the property as may cover the expense.

**745.** Under the sub-head (iii) of head (A) (Other general fees, fines, and forfeitures) of rule 643 shall be comprised all receipts not falling within any of the other principal heads of receipts, *e.g.*, forfeiture of earnest money.

**746.** Receipts under the head of account, mentioned in rule 745, are at once credited at the treasury to Government. They are not to be retained intermediately in deposit either at the Court or at the treasury.

#### Control of Subordinate Courts.

**747.** The receipts of subordinate Courts under the sub-heads (i) to (vii) of head (A) of rule 643 are included in the daily statement sent to the District Judge under rule 711, and are also included in the Daily Advice from the treasury received by the District Judge under rule 701. The Judge must effect a comparison between these two, and see that in each month the total amount advised as paid into the treasury agrees with the total amount realised by the subordinate Courts.

#### Monthly Returns.

**748.** At the close of the month, every Judge in charge shall prepare Lists in Form No. (A) 22 of all the receipts, forfeitures or duty, under the sub-heads (i) to (vii) of head (A) of rule 643, paid by him into the treasury. Subordinate Courts shall forward their lists in duplicate to the District Judge, and the District Judge shall add the totals of these lists at the foot of his own list, and, appending one of the copies received by him from each subordinate Court, shall forward the whole to the Accountant-General for check against the treasury accounts.

## 2. Miscellaneous rules.

#### Accountant and Cashier.

**749.** In carrying out these rules, care must be taken by all judicial officers that, in respect of cash transactions in Court, district officers are employed as accountant and cashier. In other words, the same officer shall not keep the Registers of Chalans and Payment Orders, Deposit Registers, etc., and also receive and pay the money.

**NOTE.**—A naib nazir or a clerk may be appointed as cashier provided (i) that he is expressly so designated, (ii) that his duties and responsibilities are made clear, and (iii) that he gives the necessary security. Such appointments should be made in cases where the nazir, owing to the pressure of other work, is unable to discharge the duties of cashier prescribed by these rules adequately.

#### Language of Accounts. -

**750.** Every judicial officer shall, save with the express permission of the District Judge, keep his accounts in English; and it must be distinctly recorded by him whether the Sheristadar is, or is not, responsible for a general control and supervision over the accountant.

**NOTE.**—At headquarters stations the Sheristadar of the District Judge, and at subdivisions and out-stations the Sheristadar of the "Judge in charge" should be required to inspect periodically and carefully the nazir's account books. The Sheristadar should appear his dated signature in the pages of the account books in token of his having examined them. The discovery of any defects, of a breach of the High Court's account rules, or of the instructions given in rule 642 and the Notes to Forms Nos. (A) 23 and (A) 24, should be promptly brought to the notice of the Judge in charge." In the case of Courts in the interior of the district, the fact should, without delay, be brought to the notice of the District Judge.

#### Forms.

**751.** The whole of the necessary forms and account books are to be obtained through the Forms Department, and each Court is responsible for maintaining a proper printed stock of all the forms/herein prescribed, and for submitting timely indents according to the rules in force from time to time. Manuscript forms are prohibited.

#### Daily Examination of Accounts.

**752.** The accounts and registers, of which a list is given in Appendices I and II annexed to these rules, must be compared daily by the Judge in charge; and this rule is on no account to be neglected, as its observance is essential to the integrity of the transactions and the correctness of the books. The notes at foot of the forms indicate how the verification is to be made.

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<sup>1</sup>For custody and distribution of Forms, etc., see rules 930 and 924.

## APPENDICES.

### Appendix I.

**List of Registers to be compared daily by Judge in charge (Rule 752).**

*For all judicial officers—*

Kept by the accountant—	Form No.
(1) Register of chalans .. .. .	(A) 14
(2) Register of chalans for petty receipts .. .. .	(A) 15
(3) Register of Payment Orders .. .. .	(A) 16
(4) Treasury pass book .. .. .	(A) 17
(5) Register of deposits received—	
Part I } .. .. .	(A) 18
Part II }	
(6) Register of deposits repaid—	
Part I } .. .. .	(A) 19
Part II }	
(7) Clearance Register of A deposits .. .. .	(A) 20
(8) Register of Judicial Deposits (other than civil deposits and peremptory receipts) and refunds .. .. .	(A) 22

*Kept by the cashier—*

(1) Counterfoils of receipts granted by cashier for peremptory cash receipts .. .. .	(A) 23
(2) Peremptory cash register .. .. .	(A) 24
(3) Cash book .. .. .	(A) 25

*For District Judges—*

*Kept by the accountant—*

Register showing deposits received and repaid by Subordinate Courts .. .. .	(A) 21
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*Kept by the cashier—*

Register of Intestate Property .. .. .	(A) 27
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### Appendix II.

**Judge's Daily Examination of Accounts.**

#### (1) Transactions at Court.

Comparison of cashier's cash book with the Registers of Chalans and Payment Orders.

Comparison of Treasury pass book with the cash book.

#### (2) Transactions at Treasury.

Comparison of treasury advice with postings therefrom in the Registers of Chalans, of Payment Orders, of Deposit Receipts, and of Miscellaneous Receipts.

Comparison of Treasury Advice with Treasury pass book.

#### (3) Transactions at Subordinate Courts.

By Subordinate Court—Comparison of the daily statement with the registers.

By District Judge—Comparison of Treasury Advice with subordinate Court's statement.

Comparison of statement with posting therefrom in the Register Form No. (A) 21, and Registers of Receipts and Payments of Deposits.

**Judge's monthly examination of accounts.**

1. The proper closing and totalling of all registers.
2. Comparison of out-going statements with office registers.
3. Comparison of *plus* and *minus* memorandum with totals of registers.
4. Ascertainment and verification of outstanding payment orders.

By District Judge—Comparison of subordinate Court's returns with register Form No. (A) 21.

**Appendix III.**

**List of Returns.**

*(1) From the Subordinate Courts to the District Judge.*

Statement of total receipts and payments on  
account of deposits and other transactions  
(rules 711 and 747) .. .. . Daily.

**Pages 251, Appendix III—List of Returns—**

*Below the heading "(1) From the Subordinate Courts to the District Judge"—*

*(i) against the entry "Extract Register of repayments.....(rule 711)" insert the word "Daily" in the right-hand column, and under this entry insert the following new entry, viz.:—*

"Memorandum relating to peremptory receipts (Rule 690A).....  
.....Monthly."

*(ii) after the last entry "Statements of lapsed deposits (rule 735).....  
.....Annually" insert the following new heading and entry and  
renumber headings (2) and (3) as (3) and (4), respectively:—*

*"(2) From the Judge in charge to the treasury. Memorandum relating  
to peremptory receipts (Rule 690A).....Monthly."*

[No. 14 dated the 15th June, 1958, Circular Order No. 3 (Civil) of 1946.]

and 726) .. .. .

Extract from register of deposit repayments  
(rule 724) .. .. . Monthly.

Statements of receipts of his Court, and of the  
Courts subordinate to him, under the sub-  
heads (i) to (vi) of head (A) of rule 643 (rule  
748) .. .. . Monthly.

*(3) From the District Judge to the Accountant-General direct.*

Clearance Register of A deposits (rule 730) .. Annually.

Statement of lapsed deposits of his Court, and  
of the Courts subordinate to him, with  
certificates of the examination of B deposits  
enfaced (rules 735 and 733) .. .. Annually.



## **PART VII.—Rules Relating to Registers, Periodical Returns, Statements and Annual Reports.**

### **CHAPTER 35**

#### **REGISTERS.**

##### **General.**

**753.** A list of the registers prescribed for being maintained in the Civil Courts will be found in Volume II, comprising four classes:—

- (a) Account Registers.
- (b) Primary Registers.
- (c) Subsidiary Registers.
- (d) Statistical Registers.

**NOTE 1.**—The forms of the registers are in most cases self-explanatory and the additional instructions in this Chapter are for general guidance. Account Registers are separately dealt with in Part VI.

**NOTE 2.**—When registers are in bound volumes, the volumes should not be closed until all the forms therein have been exhausted.

**754.** Other Subsidiary or Statistical Registers shall not be maintained in any Court without the High Court's sanction. The list referred to specifies all the registers which, it is believed, if properly maintained, will furnish every information absolutely necessary for judicial, administrative or statistical purposes. The introduction of unauthorised registers or books of any kind is prohibited.

All registers shall be kept in English.

**755.** The periods for which different registers have to be preserved are shown in the list given of them in Volume II. The periods stated therein are to be reckoned from the date of the last entry in the register and at the expiration of those periods the registers shall be destroyed.

Provided that the following registers shall not be destroyed before 1975:—

- (a) (R)1(ii)—Register of Suits for Money and Movables (relating to suits in which decrees were passed during the period from 1924 to 1959).
- (b) (R)1(iii)—Register of Rent Suits (relating to suits in which decrees were passed during the period from 1924 to 1949).
- (c) (R)10—Small Cause Sheet maintained by Courts vested with Small Cause Court powers only (relating to suits in which decrees were passed during the period from 1924 to 1959).
- (d) (R)10A—Small Cause Sheet maintained by Courts of Small Causes only (relating to suits in which decrees were passed during the period from 1924 to 1962).

**756.** No one except the clerk in charge of writing a particular register shall, unless otherwise provided, make any entry therein without the orders of the presiding Judge.

*Note.* A separate register should be maintained for Matrimonial suits in Form No. (R)1(i)."

64, dated the 27th November, 1963. Circular Order No. 1 (Civil) of 1961.] (iii). as of

*Suits:— Matrimonial Suits in Form No. (R)1 (i)."*

Page 253, Rule 757—

Add the following note to the rule:—

"*Note.*—A separate register should be maintained for Matrimonial suits in Form No (R)1(i)."

*Small Cause Sheet/No. (R)9/and Small Cause Sheet/No. (R)10A.*—These registers shall be used in Courts of Small Cause only and not by Munsifs and Subordinate Judges vested with Small Cause Court powers.

**759.** *Small Cause Sheet [No. (R)10].*—This register shall be used in Courts of Munsifs and Subordinate Judges vested with Small Cause Court powers and regarded as the General Register of Small Cause Court Suits in such Courts.

**760.** The particulars required to be entered in the Suits registers should contain everything material to the case and yet be as concise as possible. The particulars regarding proceedings in execution of decrees should also be duly and regularly filled in. All entries must be made contemporaneously with the stages through which a case or subsequent proceeding, if any, passed and the writing of registers, etc., must not be deferred till after the disposal of cases.

**761.** *Register of Execution Cases [No. (R) 5].*—A separate register has been prescribed for execution cases not with the object of superseding the information to be entered in the execution columns of the General Register of Suits, but for the sake of administrative convenience, and also for the purpose of showing proceedings in execution of decrees of other Courts.

**NOTE 1**—Applications under Or 21, rr. 95 and 96 of the C. P. Code, for the delivery of possession of immovable property sold in execution of decrees, if uncontested, are to be treated as continuations of the execution cases to which they relate. A note of such applications with dates thereof, should be made in the appropriate column of this register

**NOTE 2**—For contested cases arising out of applications under Or 21, rr 95 and 96, see rule 776(a)(11)

**NOTE 3**—This register will also serve the purpose of a daily list of execution applications filed. It should be laid at some conspicuous place in the Court room every day at a fixed time for inspection by parties and pleaders

Page 253, Rule 762—

(i) Insert the words "other than those under the Guardians and Wards Act, 1890", after the word "applications" in line 4.

(ii) In the Note below the rule substitute the words "except those mentioned in clause (35) of that rule, relating to cases under the Guardians and Wards Act, 1890, and also those for insolvency under the Provincial Insolvency Act, 1920, for which separate registers in Forms No. (R)2A and No. (R)3, respectively, have been prescribed" for the words "except applications.....in Form No. (R)3", in lines 2 and 3.

**763. Register of Miscellaneous non-judicial cases (R) 4.**—In this register should be entered all miscellaneous non-judicial cases mentioned in rule 777 *post* and cases under section 7 of the Bengal Wills and Intestacy Regulation, 1799 (Bengal Regulation V of 1799) in which no claimant appears [*vide* Note to rule 344(d) (viii)].

**764. Register of Appeals [Nos. (R) 6(i), (R) 6(ii), (R) 6(iii)].**—This register shall be maintained in the Courts of District Judges and in Courts in which appeals are preferred under section 21(4) of Act XII of 1887. The records of appeals transferred to the Courts of Additional District Judges and Subordinate Judges for disposal, shall, as soon as possible after the appeal has been disposed of and copies of judgment and decree sent to the lower Court be returned to the Court of the District Judge for the purpose of having columns 8-10 of the latter's register filled in his office. After this is done, the records shall again be sent to the Court disposing of the appeal for transmission to the record room in due course.

**765. Register of Miscellaneous Appeals [No. (R) 8].**—This register shall be maintained for only appeals from orders under section 104, C. P. Code (Or. 43, r. 1) and appeals in miscellaneous judicial cases.

**NOTE.**—Applications to withdraw or transfer an appeal under sec. 24, C. P. Code, for the re-admission or rehearing of an appeal under Or. 41, rr. 19 and 21, and for review under Or. 47, r. 1 not being appeals but of the nature of original applications though made to an appellate Court, should be entered in the Register of Miscellaneous cases kept in that Court. When, however, an appeal is remanded, revived or reviewed, it will of course be shown in its proper place in the Register of Appeals.

### 3. Subsidiary Registers.

**766. Register of Application for copies [No. (R) 23].**—This register shall be maintained by the head comparing clerk or other officer-in-charge and not by a copyist.

**NOTE.**—Applications for copies or inspection of Wills and Registers of Wills, shall, in accordance with the orders of the State Government, be entered in this register.

**767.** A register should be maintained for the attendance of ministerial officers. The form prescribed by the State Government may be used for the purpose.

**N.B.**—For other subsidiary registers, see Volume II.

### 4. Statistical Registers.

**768. Registers [Nos. (R) 42 to (R) 48].**—These registers are intended to be written up from day to day, so that the entries in the different columns should consist of consecutive series of numbers the last of which should, at the end of the month, quarter or year, at once supply the information required for inclusion in the various periodical statements to be submitted.

**NOTE 1.**—The value of suits should be expressed in rupees only. Fraction of a rupee less than 8 annas will be disregarded and 8 annas and above will be reckoned as one rupee.

**NOTE 2.**—Presiding Judges should see from time to time that these registers are regularly and carefully maintained. Unauthorised registers or books which seek to supplement them will then be unnecessary and their use is strongly discouraged.

## CHAPTER 36

### PERIODICAL RETURNS AND STATEMENTS.

#### 1. Forms.

**769.** The forms prescribed for submission by the Civil Courts of statements and returns are entered in the list to be found in Volume II.

**770.** The forms themselves contain instructions for observance. The following general instructions are intended to secure the correct and uniform preparation of these statements. All presiding Judges and other officers concerned are responsible that the statements are prepared accurately and in exact compliance with the instructions issued.

**NOTE 1.**—Printed forms of the periodical statements will be supplied by the Press and Forms Manager, West Bengal, to all subordinate Courts from time to time on indent. The forms so supplied should alone be used for the periodical statements. The practice of extending the printed forms by pasting sheets of paper on to them should be avoided. As many printed forms as may be necessary to contain the information required should be used. For reports and for explanations where they have to be written separately, foolscap paper should be used.

**NOTE 2.**—Where a statement is blank it should not be submitted in a form, a note to that effect being sufficient.

**NOTE 3.**—In all the returns annas and pies should be omitted from the column in which any sums of money have to be shown.

**NOTE 4.**—Care must be taken that the number of suits or cases shown as pending at the close of one period is entered as pending at the beginning of the next. When, however, the entries must differ by reason of an error in a previous return, a note should be added explaining the discrepancy and pointing out the parts where corrections should be made.

#### No. 65.

##### Page 255, Rule 771(1)—

(a) For the word "three" in line 2 of the rule, *substitute* the word "four"

##### Page 255, Rule 771(1)—

a) For the word "three" in line 2 of the rule, *substitute* the word "four".

b) Put a full stop *after* the word "law" in item (ii) below the rule v).  
*delete* the last word "and".

c) *After* item (ii) as amended, *insert* the following:—

"(iii) Matrimonial suits and appeals in the same."

d) *Remember* the existing item (iii) below the rule as item (iv)

ment NOS. 2, 3, 4, Part I [NOS. (v) 11, (v) 12, (v) 13, --].

**772.** Suits for money and movables are again subdivided according as they are dealt with under the Small Cause Court procedure, or under the ordinary procedure. Where an officer has the powers of a Small Cause Court Judge, the work done by him in the exercise of these powers, should be shown bracketed with that done under his ordinary powers, and a similar plan must be followed where a Small Cause Court Judge has the powers of a Subordinate Judge.

**773.** Where an officer has been appointed by the State Government under section 115C of the Bengal Tenancy Act, 1885, to be a Special Judge for the purpose of hearing appeals from the decisions of Revenue Officers under Chapter X of that Act, the work done by him in the exercise of those special powers should be shown in Quarterly Statement C [Form No. (S) 6], and in Annual Statement 5, Part I [Form No. (S) 15], bracketed with that done under his ordinary powers.

**774.** Cases under the Religious Endowments Act (XX of 1863), under sections 88 and 92, Or. 36, r. 3, C. P. Code, and applications for declaration that a marriage be dissolved by exercising the right of option of puberty ~~putting aside an election under section 36 of the Bengal~~ <sup>Municipal</sup> ~~Alluvia~~ <sup>entered</sup>

Page 256, Rule 775—

No. 66.

After the rule, insert the following:—

Page 256, 1

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"775A. If a petition is allowed in a proceeding under the proviso to section 14(1) of the Hindu Marriage Act, 1955, or under the proviso to section 29(1) of the Special Marriage Act, 1954, such proceeding thereon is to be treated as a suit within the class mentioned in item (iii) of rule 771(1)."

[No. 66, dated the 27th November, 1963. Circular Order No. 1 (Civil) of 1961.]

NOT, 2.—Applications should be treated in the same manner as applications administration.

## (II) Miscellaneous Judicial Cases.

**776.** Separate statements being provided to show applications for the execution of decrees, these will not be included under the head "Miscellaneous Judicial" cases, and it is intended that such other cases only as require a judicial enquiry or order should be included.

The following list shows the cases which are to be entered under the head "Miscellaneous Judicial" cases, and without the special orders of the High Court, no addition should be made thereto:—

### (a) Cases under the Civil Procedure Code.

(1) Applications under sections 22 and 24, C. P. Code.

(2) Applications under Or. 9, rr. 4, 9 and 13, and under Or. 41, rr. 19<sup>2nd</sup> and 21.

(3) Miscellaneous civil proceedings under Or. 16, rr. 12 and 17.

(4) Cases under section 47, C. P. Code.

(5) Applications under section 95, Civil Procedure Code.

NOTE.—Applications for ascertainment of mesne profits should be regarded as applications made in the course of the trial of the suit (Or. 20, r. 12) and are not to be registered as miscellaneous judicial cases.

(6) Applications under section 144, C. P. Code.

(7) Applications under Or. 21, r. 2, by judgment-debtors to certify payment or adjustment alleged to have been made when no execution proceeding is pending.

- (8) Applications under Or. 21, r. 46 (A).
- (9) Applications under Or. 21, r. 58 and Or. 38, r. 8.
- (10) Applications under Or. 21, rr. 90 and 91.
- (11) Applications under section 74 and Or. 21, rr. 97 and 98.
- (12) Applications under Or. 21, r. 100(I).
- (13) Applications under Or. 22, r. 9.
- (14) Commissions under section 76(2), C. P. Code.
- (15) Applications under Or. 33, r. 1 and Or. 44, r. 1.
- (16) Proceedings under Or. 39, r. 1 (2) and (3) and r. 2(3) and (4).
- (17) Applications under Or. 46, r. 7.
- (18) Applications under Or. 47, r. 1.

(b) *Cases under other Acts:*

(19) Cases regarding the property of intestates under section 7 of the Bengal Wills and Intestacy Regulation, 1799, in which a claimant appears.

(20) Applications for the issue of an injunction under section 6, Bengal Patni Taluks Regulation, 1819.

(21) Applications for setting aside a sale under the fifth clause of section 14A, Bengal Patni Taluks Regulation, 1819 (as amended by Bengal Act IV of 1933).

(22) Applications under section 17, clause (7) of the Bengal Patni Taluks Regulation, 1819 (Regulation VIII of 1819).

(23) Applications regarding the care of lunatics' estates, and the guardianship of their persons under the Indian Lunacy Act, 1912.

**Page 258, Rule 776—**

In the list appended to the rule—

1912,

(a) *Substitute the following for clause (57) [Slip No. 15]:—*

“(57) Proceedings under the following sections of the Special Marriage Act, 1954, viz., (i) under sections 8(2) and 17; (ii) under the proviso to section 29(1) if the petitions are not allowed; (iii) under sections 37(1), 37(2) and 37(3) and those under sections 36 and 38, if the evidence is taken.”

**Page 258, Rule 776—**

In the list appended to the rule—

(i) In clause (31), *add the following:—*

“Applications under section 8(2) of the Hindu Minority and Guardianship Act, 1956”.

l. 93,  
3) and

(ii) *Substitute the following for clause (37)—*

“(37) Miscellaneous criminal cases under sections 195, 476, 478 and Indian 480 and references under section 146(1) of the Criminal Procedure Code, 1898.”

(iii) *Substitute the following for clause (43)—*

“(43) Applications under sections 34, 49, 71, 72 and 74 of the Indian Trusts Act (II of 1882).”

(35) Applications for certificates of guardianship of minors, or of administration of their property under the Guardians and Wards Act, 1890, or for the revocation of such certificates, applications under section 31 of the same Act for sanction to the sale or disposal of the property of minors, and applications under section 25 of the same Act for custody of minors.

(36) Cases under Parts III, IV, section 32 of Part V and Part VI of the Land Acquisition Act, 1894.

(37) Miscellaneous criminal cases under sections 195, 476, 478 and 480 of the Criminal Procedure Code, 1898.

(38) Insolvency petitions under the Provincial Insolvency Act, 1920.

(39) Proceedings under section 72(2) of the Provincial Insolvency Act, 1920.

NOTE.—Subsequent proceedings in connection with the same insolvency petition except contested proceedings under secs 4, 53, 54 and 69 of the Act are to be treated as part of the original proceedings, and should not be registered as separate miscellaneous cases. Contested proceedings under these sections should be registered as separate miscellaneous judicial cases and the number of the insolvency case should be noted below the number of the subsequent miscellaneous judicial case.

**258, Rule 77c—**

**No. 67.**

made under section 74  
ment

in the list appended to the rule—

(i) *Substitute* the following for clause (43) (as amended by slip, <sup>1</sup> to Act, 18):—

“(43) Applications under sections 34, 36, 49, 53, 71, 72 and 74 of the <sup>V</sup> of Indian Trusts Act (II of 1882)”.

(ii) *For* clause (46) *substitute* the following:—

“(46) Applications under sections 75, 141, 144(3) and (4), and 155 of <sup>Trusts</sup> the Companies Act, 1956.”

(iii) In line 1 of clause (47) *insert* the figure “5,” *between* the word <sup>and</sup> “sections” and the figure “7(2)” <sup>the</sup>.

(iv) *Substitute* the following for clause (57) [Slip No. 15]:—

893).

“(57) Proceedings under the following sections of the Special Marriage Act, 1954, viz., (i) under sections 8(2) and 17; (ii) under the proviso to section 29(1) if the petitions are not allowed; (iii) under sections 37(1), 37(2) and 37(3) and those <sup>and</sup> under sections 36 and 38, if the evidence is taken.” <sup>ation</sup>

(v) *Substitute* the following for clause (58) [Slip No. 15]:—

“(58) Proceedings under the following sections of the Hindu Marriage Act, 1955, viz., (i) under section 6(5), where a temporary injunction is granted; (ii) under the proviso to section 14(1), if the petitions are not allowed; (iii) under <sup>7</sup> of sections 25(1), 25(2), 25(3) and also under sections 24 and 26, if the evidence is taken.”

(vi) *Insert* the following *after* clause (58) [as inserted by slip <sup>govern-</sup> No. 15]—

(59) Applications under section 20(2) of the Minimum Wages Act <sup>Non-</sup> (11 of 1948).

(60) Applications under section 16(3) of the Indian Telegraph Act <sup>Act XIII of 1885).</sup>

87. dated the 27th November, 1963. Circular Orders Nos. 5 and 3 of 1960, 7 and 1 of 1961, 2 of 1960 and 5 of 1961 (Civil).]

## (iii) Miscellaneous Non-Judicial cases.

**777.** Under the head "Miscellaneous non-judicial" cases information is required in the returns regarding only a few specified heads, viz.:—

(1) Applications for the service of notices of execution by non-occupancy raiyats of agreements to pay enhanced rent under section 46 of the B. T. Act, 1885.

(2) Applications by tenants to deposit rent under sections 61 and 62 of the same Act.

(3) Applications for service of notice under section 72 (2) of the same Act.

(4) Applications for the service of notice of surrender of holdings under section 86(2) of the same Act.

(5) Application for service of notice under section 155(1) of the same Act.

(6) Applications for annulling incumbrances under section 167 of the same Act.

(7) Applications under section 9(1) of the Bengal Money-lenders Act, 1933 and section 39 of the Bengal Money-lenders Act, 1940.

(8) Applications for service of notice under section 26C(5), proviso 2, of the B. T. Act, 1885, as amended by Bengal Act VI of 1938.

No. 68.

**259, Rule 777—**

delete clause (10) of the rule.

Act,  
68, dated the 27th November, 1963. Circular Order No. 3 (Civil) of the  
1960.]  
Bhojpur Debar Tenancy Act.

(12) Applications under section 51 of the West Bengal Non-Agricultural Tenancy Act, 1949.

## (iv) Miscellaneous Appeals.

**778.** The following are classed as Miscellaneous Appeals:—

(1) Appeals from orders under section 104 (1) [Or. 43, r. 1].

(2) Appeals in miscellaneous judicial cases.

(3) Appeals under section 74A(2) of the B. T. Act, 1885, as amended by Bengal Act VI of 1938.

**3. Compilation of Statements and Returns.**

**779.** For statistical purposes, suits in which preliminary decrees are made under the provisions of Or. 20 of the C. P. Code, and suits for the foreclosure of a mortgage or the sale or redemption of mortgaged property in which a preliminary decree is made under the provisions of Or. 34 should be treated as disposed of and entered in the periodical statements as such when the preliminary decree is passed. If, at any time afterwards, an application is made for making the decree final, the suit should be brought into file again, and included in the column "Revived."

**NOTE 1.**—Subsequent proceedings are to be treated as a continuation of the suit. Cases brought into file again and disposed of should also be separately noted in the remarks column of statements and returns.

**NOTE 2.**—As to transmission of records of such suits to the record room, see Notes 1 and 2 to rule 395.



**780.** When a defendant having appeared at the first hearing fails to appear at an adjourned hearing and a decree is passed against him, the case should be exhibited as “decree *ex parte*”.

**781.** (1) It is not possible to define precisely when a case should be treated and shown as decided without contest or “after full trial”. Generally speaking, when any substantial question of fact or law is raised in the defence and is not waived at the trial, the decision is after full trial although little or no evidence, oral or documentary, may have to be adduced by the parties at the hearing. The main principle that should be kept in view is whether the contest is real or genuine and calls for judicial determination by the Judge. Figures are necessary for statistical purposes as also to be assured that each officer is doing a fair share of *bona fide* contested work: Merely routine matters or matters of nominal contest which in no sense call for the exercise of judicial discrimination or discretion and which do not take up any appreciable amount of time, should not therefore be shown in the statements as contested work.

(2) The following are some instances of cases which should be treated as decided without contest and shown as such, namely, all cases in which the only question or questions ultimately decided on, or with display of contest are:—

- (a) A question regarding the amount or apportionment of costs of a case, or
- (b) a question regarding payment by instalments, or
- (c) an unsubstantial question as to the rate of interest, or
- (d) a question regarding the award or amount of damages in suits for recovery of rent.

NOTE 1.—Such cases should be shown as disposed of on admission or compromise as the case may be.

NOTE 2.—Cases in which preliminary decrees are passed (e.g., mortgage, partition, account, etc.), should be considered as decided on contest when either the preliminary or the final decree or both are passed after contest. A suit may be contested, but when there is no judgment in it after contest and it is eventually decreed *ex parte* or compromised, it should be shown as decided without contest.

**782.** A case is not said to be received or disposed of by transfer except when it is passed from one Court to another by a judicial order. Cases which have been left by the presiding Judge to his successor in the same Court are not to be treated as transferred. Where on account of some mistake or otherwise in classification a case has to be removed from one file to another in the same Court, the column “Pending” must be corrected and explanation given in the next return.

**783.** Applications under sec. 39, C. P. Code, for transfer of decrees to other Courts not being applications for execution should not appear in the returns at all, whether granted or refused. The receiving Court is not to make any entry in its returns until an application is filed for execution. If after commencement of proceedings in any Court on an application for execution, the judgment-creditor makes an application for transfer to a Court not subordinate, and the Court complies with it under clauses (a) to (d) of section 39(7), the case pending in the transferring Court shall be returned as disposed of by transfer, when satisfaction of the decree has not been obtained at all on the application for execution; and as disposed of on its merits, when part satisfaction has been obtained; but, as directed above, it is not to be noticed in the receiving Court’s returns as received by transfer.

**NOTE.**—If a decree be transferred for execution by a superior Court to a subordinate Court of its own motion, after an application for execution under Or. 21, r. 10, has been filed and execution ordered under Or. 21, r. 17, that application should be shown as disposed of and received by transfer.

**784.** (1) In order to obtain the average duration of cases the aggregate number of days for which all cases were pending before the Court must be divided by the total number of such cases.

(2) In calculating average duration of cases or appeals, the time that the case has actually been pending in a particular Court should alone be calculated. A case should be considered to start pending when it is received in the Court whether by institution or by transfer, and to cease pending when it is no longer before the Court whether as the result of disposal or by transfer to another Court. In the calculation, received or remanded cases are to be treated as if newly instituted on the date of revival or on the date of receipt by remand.

**NOTE.**—Fractions should be omitted from the columns intended to show the average duration of cases decided.

**785.** Cases restored or revived or brought into the file again when final decree is applied for and cases received on remand or by transfer shall be treated as pending from the *date of institution* and not from the date of restoration, revival, receipt on remand or by transfer, for all other purposes other than calculation of "average duration".

**NOTE 1.**—The date of the transfer of a case by one Court is ordinarily to be taken as the date of its receipt on transfer by another; any instances of unusual delay should be noticed in the explanations.

**NOTE 2.**—Advantage should be taken of the column in the returns for "Remarks" to show the extent to which the particular Court immediately concerned is responsible for any delay, which, under the rules, requires explanation.

**786.** As regards suits, the date of the presentation of the plaint shall be considered as the date of institution, unless it contains some defect or omission so serious as to require its return before registration or amendment, in which case the date of admission, after correction and refiling or amendment, shall be regarded as the date of institution. With regard to applications to execute decrees, the date of their presentation should alone be considered.

**NOTE.**—When on account of heavy filings on a particular date a plaint is entered in the Suit Register after the date on which it was presented, the date of registration should be shown below the date of presentation in the appropriate column of the Register of Suits as also on the order-sheet of the record.

**787.** When an order has been made under Or. 41, r. 25 or 27 of the C. P. Code, the case is to be considered as pending before the appellate Court, and the time occupied in making the return called for, or in taking the evidence, must be counted as time occupied in the appeal. If there is much delay in obtaining the finding or evidence asked for, the remarks column may be availed of in explaining the consequent delay in the disposal of the appeal.

**788.** When an order of remand is made under Or. 41, r. 23 of the C. P. Code, the case must be treated as decided by the appellate Court, and must be brought on the file of the lower Court.

**789.** Separate accounts must be kept of the time cases, whether suits or appeals, were pending (1) from institution to original or first decision; (2) from date of application for review to date of finally disposing of the case, whether the review shall have been granted or refused; (3) from the date of the order of remand under Or. 41, r. 23 of the C. P. Code, to the date of the new decision under such order. In Annual Statements Nos. 4 and 5 [Forms Nos. (S) 13 to (S) 16, Volume II] it will be necessary to give only the average duration before the original or first decision of a suit or appeal.

#### 4. Submission of Periodical Returns and their Dates.

**790.** Monthly, quarterly and half-yearly statements should be despatched by subordinate Courts to the District Judge on or before the 5th of the month next succeeding the period to which they relate, and annual statements on or before the 20th day of the new year.

NOTE.—The monthly statement in Form No. (S) 1 is to be submitted every month irrespective of the quarterly and other periodical statements.

**791.** Quarterly and half-yearly statements should be submitted by District Judges to the High Court on or before the 15th of the month next succeeding the period to which they relate; and annual statements, along with the annual report on the administration of civil justice, on or before the 15th February of each year.

**792.** The President of the Calcutta Improvement Tribunal shall submit in duplicate to the High Court quarterly on or before the 15th of the month succeeding the period to which they relate returns in Forms Nos. (S) 7A and (S) 7B.

For the preparation of these returns statistical registers shall be maintained in these forms.

**793.** Punctuality in the submission of all statements and annual reports must be insisted upon, and District Judges should be careful to take the necessary steps to ensure the accurate compilation and prompt despatch of the same. The High Court will be compelled to take a serious view of the conduct of any officer who neglects to accord due attention to these orders.

**794.** (1) Every District and Additional District Judge shall submit monthly to the High Court a statement in the prescribed Form No. (S) 3 on or before the 15th of the month next succeeding the month to which it relates, showing the cases and appeals that he has heard in which arguments have not been heard and judgments have not been delivered, and every Subordinate Judge and Munsif shall submit a similar statement to the District Judge.

(2) The statement submitted by Subordinate Judges and Munsifs shall be scrutinised carefully by the District Judge who will ordinarily pass necessary orders thereon with a view to avoid all unreasonable delay in delivery of judgment, but if considered necessary in any particular case, a report of the matter will be made by him to the High Court.

**795.** At the end of every quarter, all subordinate Courts shall send a return to the District Judge, showing the number of applications for copies of decrees in which the copies were not ready for delivery to the parties within fourteen days after they were filed.

**796.** The presiding Judge of every subordinate Court shall examine the records of at least 5 per cent. of the execution applications finally disposed of in the month in order to satisfy himself that the necessary information relating to them has been entered in the Suit Register and send to the District Judge a certificate to this effect monthly along with the monthly statements and returns that are to be submitted to him.

**797.** Except where otherwise specially provided, the returns are meant to show separately the work of each Court, and not the work of each officer who may have presided during the year in the same Court. Officers' names need not therefore be given. Where a Small Cause Court Judge presides over more than one Court, the returns must show distinctly the work of

each Court unless the figures required are mere totals for the "class of Court".

**798.** Where the figures given in any return differ from those given in any returns previously submitted, explanations should always be given in order to avoid the necessity for a reference in the matter. Much correspondence will also be rendered unnecessary if, before submission, figures entered in the annual statements are compared with those in the High Court's printed report for the previous year.

**799.** Officers having work in more departments than one should always note in their returns how their time was apportioned between the various departments. This is necessary to enable the High Court to judge whether the work done is sufficient, and to admit of the officer's salary being correctly apportioned in the annual returns between the various departments.

In the periodical returns submitted to the High Court by District Judges, the returns of all subordinate Courts including Small Cause Courts, as well as those of Additional Judges, should be incorporated.

**801.** Where, in the general statement compiled for any district, the total of the column "Received by transfer" differs from that of the column "Disposed of by transfer" the reason should be explained, and any cases transferred from or to other provinces should be noted particularly, as the information is required in the preparation of the High Court's general returns.

**802.** No statement or return prescribed by the High Court shall be modified, discontinued or replaced by any other, nor shall return or statement of any kind (weekly, fortnightly, monthly, quarterly etc., etc.) be introduced without an express order of the High Court previously obtained. Whenever any difficulty is experienced in respect of the prescribed forms, or any modification is considered necessary, the reasons therefor should be submitted by the District Judge with a draft of the proposed form for the consideration of the High Court. A District Judge may, however, in any particular case call for a statement other than the ordinary to enable him to deal with some special matter and when so doing, he shall see that such statement is brief in form and easily collected from existing registers.

**NOTE.**—The existence of many authorised and unauthorised returns is responsible for attention being diverted from much more important considerations and tends to defeat the whole object of the submission of periodical returns. All unauthorised special or periodical returns or statements of every kind, where they exist, should be discontinued forthwith.

**803.** (1) District Judges should carefully scrutinise the periodical statements and explanations submitted by the subordinate Courts, and satisfy themselves that the business of those Courts is transacted with due despatch.

(2) District Judges will insert at the foot of their quarterly statements, a certificate either that the statements, etc., have been found satisfactory or that needful steps have been taken in respect of those which have been found unsatisfactory, and cases which appear to call for notice or instruction of the High Court should be separately reported.

**804.** District Judges should personally examine, at least half-yearly, a certain proportion of the records of cases of all classes (contested and uncontested) disposed of by each subordinate judicial officer in the district and sent to the record room from all Courts, in order to satisfy themselves that

the work of those Courts is being done will despatch and in accordance with law.

*NOTE.*—See, rule 810(8).

**805.** (1) In the second and fourth quarterly returns submitted by the subordinate Courts to the District Judge should be given a brief explanatory note regarding the pendency of miscellaneous appeals, when an appeal has been pending for more than six months, or when a decree has been for more than six months under execution. In the case of all classes of suits and appeals from decrees, explanations are required only when such cases have been pending for more than a year. Detailed explanation regarding the pendency of cases, when necessary, should be given in the fourth quarterly return of the year.

(2) In the second and fourth quarterly returns submitted by the District Judges to the High Court should similarly be given a brief explanatory note regarding suits and cases pending over one year before themselves, the Additional Judges and the Courts subordinate to them together with the remarks recorded by them on the explanations of the subordinate Courts. Detailed explanations regarding the pendency of cases, when necessary, should be given in the fourth quarterly return of the year.

(3) Any case which appears to call for special notice should be separately brought to the notice of the High Court and District Judges are at liberty, if they think it necessary, to call for a full explanation from any subordinate Court in regard to any case on its file.

**806.** In order that when scrutinising the periodical returns the progress made in the disposal of old cases pending for more than a year may be seen at a glance, a statement in the prescribed form (S) 8 should be submitted half-yearly by the subordinate Courts to the District Judge and by the District Judge to the High Court.

**807.** (1) District Judges will submit with their quarterly returns a concise statement in Form No. (S) 7 regarding the numerical outturn of work shown by each of their subordinates, and a separate expression of opinion as to the adequacy of work disposed of by each officer during the quarter stating reasons, if any, which may account for shortage in disposals by any of them.

*NOTE.*—It is not possible to fix any standard outturn of work applicable to all Courts. In reviewing the work of each judicial officer, regard should be had to the state of the pending file, the complexity or otherwise of cases disposed of, the rise or fall in serious contest, the time spent by an officer in discharging duties when placed in administrative charge of a department, and other reasons, if any.

(2) When the returns contain any adverse remarks regarding the numerical outturn of an officer, he should be demi-officially supplied with a transcript of such remarks, with a view to rectifying the defects in future and the fact that this has been done should be noted against each in the concise statement.

**808.** Most of the annual statements can be readily compiled from the Statistical Registers, the forms of which are reproduced in Volume II, as Nos. (R) 42 to (R) 48. In the case of others, it is essential that the requisite information should be collected from time to time, so as to be available without delay at the close of the year. In the latter case District Judges should be careful to require the proper officers of their Courts, and of the Courts subordinate to them, to collect the information at convenient intervals.

## CHAPTER 37

### ANNUAL AND CONFIDENTIAL REPORTS.

#### 1. Annual Reports.

**809.** District Judges shall submit to the High Court, along with the annual returns and statements, a report for the year to which these refer upon the administration of civil justice. Tabular statements in Forms Nos. (S) 22 to (S) 31, Volume II. shall accompany the report, with apposite remarks as to any increase or decrease of business or the like, shown in each. These tables shall include the figures for all the courts of small causes and the regular Civil Courts in each district, separate totals being given for each of these classes of Courts. District Judges should be careful to avoid treating their annual reports as matters of routine, and are expected to see that the entries in the tables included in them, and those in the corresponding annual statements, agree, as they must do, exactly. The failure to explain discrepancies between figures given in two successive reports, which, in the absence of special reason, ought to be identical, is also a matter which leads to much unnecessary correspondence, and should be avoided.

**810.** (a) No particular form is prescribed for the Annual Administration Report. It is left to the District Judges to put on record the main features in the administration of civil justice of the year under review.

(b) Information regarding the following matters must, however, be included in the order stated below with explanations of important or suggestive variations in the statistics. Matters requiring special attention or suggestions regarding modification of rules should be stated separately:—

(c) A statement showing the name of each officer presiding over the District Judge's, Additional Judge's, Subordinate Judge's and Munsif's Court or Courts during the year, the number of days devoted to civil and criminal work and the total civil (and criminal) work done by him shall invariably be appended to the report.

(1) Judicial staff of the district during the year under report and the number of days devoted by the District Judge and by the Additional Judges, if any, to civil work.

(2) The number of suits instituted in the Courts of Munsifs, Subordinate Judges, and District Judges, the number of suits disposed of by each class of Courts, how many of them were contested and how many uncontested, the total number of suits pending at the end of the year in each class of Courts, how many of them were over one year old and the number of suits stayed. Noticeable rise or fall under any of these items should be explained.

(3) Percentage of successful applications for retrial.

(4) The number of regular appeals instituted, disposed of and pending, and the number of appeals pending at the end of the year which were over one year old. Any noticeable rise or fall in any of these items should be explained.

(5) Noticeable fluctuations in the average duration of suits and appeals and in the percentages of appeal and confirmation as compared with the previous year.

(6) Any points in the returns specially noticeable or requiring explanation.

(7) The observance of the rule as to the punctual commencement by the Courts of the judicial work of the day at the prescribed hour (*vide*, rule 1).

(8) The result of the examination of the records of cases decided by subordinate judicial officers (*see*, rule 804).

(9) (a) The courts inspected by the District Judge during the year under report and the last date of inspection of each of the remaining Courts in the judgeship, with reasons for not inspecting them if their inspection was done during the year and the probable date of next inspection of such Courts, the sufficiency of security of Court officials, the state of libraries, the maintenance and check of furniture and other stock.

(b) The observance of the provisions of rule 988 and 989 (inspection by all judicial officers of the offices of their own Courts).

(10) The observance of the rules regarding the distribution and service of processes (rules 50 to 100), the efficiency of the process-serving establishment, the percentage of personal service, any noticeable rise or fall in the number of processes served, as compared with the previous year.

**NOTE.**—Information should be given on such subjects as:—The date of last inspection to process-servers during the year—(a) in the Court of the District Judge and Subordinate Judges, (b) in the Courts of the Munsifs of the district, and (c) the number of appellate processes in the Court of the District Judge and the Subordinate Judges. Cases of serious misconduct among the process-serving staff and the action taken should be noted.

(11) The state of the District Record Room which must be ascertained by careful personal enquiry and not from the mere report of the Record-keeper.

**NOTE.**—Information should be given on such subjects as: The date of last inspection by the District Judge himself under rule 981 and the probable date of next inspection. Records properly classified and neatly arranged? Regular entry of particulars in the Index for racks? Records requisitioned promptly despatched? Records destroyed at due dates? etc., etc.

(12) The extent to which effect has been given to the rules regarding the arrangement of the records in the course of the trial.

(13) The mode in which effect is given to the rules relating to the employment of commissioners (Ch. XI) specially in commissions which require knowledge of surveying (rule 238 *et seq.*).

**NOTE.**—It should be noted whether commissions requiring knowledge of surveying are invariably issued to survey-passed pleaders as required by rule 238 *et seq.* A statement should also be furnished showing (i) the number of survey-passed pleaders in the district, (ii) number of other persons (if any) who are enrolled in the list of commissioners for execution of survey commission, (iii) total number of survey commissions issued during the last three years, (iv) the number of such commissions issued to survey-passed pleaders during the year and the total remuneration paid to them, (v) the number of such commissions issued to other persons during the year and the total remuneration paid to them. Remarks on the manner in which the commissioners have performed this class of work should also be added. (*See also*, rule 240.)

(14) The working of the rules regarding pleaders' and mukhtars' clerks (rule 867 *et seq.*).

**NOTE.**—Information should be given on such subjects as: Register properly maintained and revised annually? Cards renewed at close of year and re-issued promptly? Indiscriminate entry into offices allowed?

(15) Noticeable increase or decrease in the number of applications for information as compared with the previous year.

NOTE.—Numbers to be given separately for each Court in the District.

(16) Cases of corrupt practice among the ministerial and process-serving staff which came to the notice of the Courts and the punishment awarded to corrupt officials.

(17) The effect of any recent legislation on the working of the Courts.

## 2. Confidential Reports.

**811.** (1) District Judges are required to submit not later than the 15th February of each year a separate confidential report in printed form No. (M) 8, in respect of each of Subordinate Judges and Munsifs who served under them during the previous year. Such confidential reports should be type-written, if possible, by the District Judge himself or at his dictation by the confidential clerk. Entries against items 1-4 of the form may however be made and figures supplied by his office *before* entries against other items are made by him.

(2) Before leaving a district of which he has held charge, a District Judge, who has had sufficient opportunity of seeing the work of the subordinate judicial officers and is in a position to offer his considered opinion, should place on record in Form No. (M)8, for his successor's information, reports on their character, qualifications and official merits. These reports will be forwarded to the High Court at the time reports are submitted in accordance with the provisions of clause (1) of this rule.

NOTE.—District Judges are reminded that as a general rule in no case should an officer be kept in total ignorance for any length of time that his superior officers after sufficient experience of his work are dissatisfied with him. In cases where a warning might eradicate or help to eradicate a particular fault, the advantages of prompt communication are obvious.

**812.** (1) Confidential reports should set out distinctly and tersely sufficient particulars and it is essential that they should be so full as clearly to show special merits or defects so that the High Court may form a definite and correct judgment on the merits of the officer. In the case of a very bad report, it is necessary that the unfavourable traits should be briefly illustrated.

(2) No adverse remark must be made which cannot be supported by precise data, which data are liable, specially in the case of a very bad report or of an officer who had hitherto a good or average record, to be called for by the High Court.

(3) District Judges should form a clear and reasoned estimate of the merits or demerits of the officers under them on proven or known facts and express their views clearly and fully. What is desired is not an opinion at all costs but a considered and definite opinion founded on a real knowledge of the officer and his work, based not merely on appeal cases but on scrutiny of cases and proceedings which do not come in appeal and on a knowledge of the officer's administrative and general methods and capabilities. The reports should be frank and outspoken.

NOTE 1.—In this connection *see* also, rule 267.



**NOTE 2.**—Vague and inconclusive remarks or the use of such expressions as "satisfactory," "bad," or the like are not very helpful and defeat the object with which such report is prescribed. When it is said that an officer is "good" it may be taken to mean that a reporting officer has really no criticism to offer, and that the officer reported on has given satisfaction. But if an officer has any particular good quality worth mentioning, e.g., "energetic" or "sound in judgment" or "tactful," it may be of great advantage that it should be specially mentioned. In reporting unfavourably of an officer, the use of such vague expressions as "bad," "unsatisfactory," or "useless" is distinctly more objectionable. It is essential to know if possible, wherein the badness consists. The report should state whether the officer is "perverse," "untrustworthy," "lazy," "perfunctory" or whatever the particular characteristic of his work may be; and it is a good thing to illustrate briefly the unfavourable trait.

(4) The manner in which subordinate judicial officers have managed their offices and discharged their duties when placed in administrative charge of a department, (e.g., the accounts, the record room, the copying or nazarat, etc.) should be specially reported on and any instance of special excellence should be brought to the notice of the High Court.

**813.** If the confidential reports on the work and character of subordinate judicial officers contain remediable defects or any adverse remarks regarding an officer which in the opinion of the High Court should be communicated to him for his guidance and correction, a transcript of the remarks will be sent by the Registrar directly to the officer concerned.

**814.** District Judges are required to submit on or before the 15th November of each year a confidential report on the work and character of the Sheristadars of their Courts and the nazirs at district headquarters and a copy of their yearly landed property statements showing immovable property held, acquired, or disposed of by them in any district including property acquired in the name of their relations and other persons. Their character and reputation should be specially reported on and it should be noted what relations they have in service in all the offices of the district and among legal practitioners.

**NOTE.**—The landed property statement should be submitted in Form No. (S) 31 with suitable modifications.

## PART VIII.—Legal Practitioners.\*

### CHAPTER 38

#### THE QUALIFICATION, ADMISSION AND CERTIFICATES OF PLEADERS AND MUKHTARS IN COURTS SUBORDINATE TO THE HIGH COURT.

##### 1. Qualification of Pleadors.

**815.** (1) No person shall be admitted as a pleader in the Courts subordinate to the High Court, unless he has served as a probationer for a period of one year or such shorter period as the Court may under special circumstances allow in conformity with the following rules, is eligible thereunder and has satisfied the requirements thereof.

Provided that a person who has been enrolled as a pleader under any other High Court and has practised as such in Courts subordinate of that High Court, for a period of three years, and who desires to be enrolled as a pleader under this High Court, may be exempted from serving as a probationer as required under this sub-rule, on his making an application to this High Court for the purpose. But any such pleader not completing the aforesaid period of practice shall ordinarily be required to serve as a probationer for one year in accordance with these rules.

##### 289, Rule 815—

**No. 65.** ~~and the degree of Bachelor of Law of~~ Dacca,

clause (2) of the rule and Note thereto and substitute therefor wing—

Any person, who has obtained the degree of Bachelor of Law of one of the Universities of Agra, Aligarh, Allahabad, Banaras, Bihar, Bombay, Calcutta, Dacca, Delhi, Gauhati, Gujrat, Lucknow, Madras, Nagpur, Patna, Poona, Punjab, Rajasthan, Mysore, Utkal or has passed the examination qualifying himself for obtaining such degree, shall be enrolled as a probationer, provided that his application to serve as a probationer he made within one year from the date of his obtaining such degree, or within such further time as the High Court may, for special reason, allow, and provided that a Bachelor of Law of any of the Universities aforesaid, other than the Calcutta and Dacca Universities, so applying has passed an examination in reading,

writing and speaking the Bengali language held under the direction of the District Judge of the District in which he intends ordinarily to practise, or under the direction of the Chief Judge, Court of Small Causes, Calcutta, in case the applicant desires ordinarily to practise in his Court or in the Courts of the Presidency Magistrates, Calcutta.

1.—The period of one year referred to in this rule shall count from the date of the applicant's diploma.

2.—The High Court may, for special reason, exempt an applicant from appearing at the examination in the Bengali language, referred to in this rule."

Noted the 27th November, 1963. Rules No. 4(Civil) of 1960 and Nos. 8 and 9 (Civil) of 1961.

case the applicant desires to practise in his Court or in the Courts of the Presidency Magistrates, Calcutta, and it shall specify the pleader with whom and the Court in which the applicant desires to serve as a probationer, and shall be accompanied by a certificate from the pleader stating that he is willing to take the applicant as a probationer: Provided that no pleader, who is not a practising pleader of more than five years' standing or is ordinarily practising in the Courts of the Presidency Magistrates, Calcutta, shall be eligible to take a probationer and no pleader shall be permitted to entertain more than one probationer at one time.

NOTE 1.—A person may, with the permission of the High Court, serve the required period of his probation with an Advocate originally practising in the Courts subordinate to the High Court. In such a case the word "Advocate" should be read for the word "pleader" occurring in this sub-rule and the following sub-rules.

NOTE 2.—Probationers are not permitted to accept any form of outside employment during the period of probationership without the order of the High Court. Every person applying for enrolment as a probationer should state in his application whether he is otherwise employed or not at the time and, if he is, his case should be referred to the High Court for orders, with full particulars regarding the employment.

(4) On receipt of the application mentioned in the last foregoing rule, and if it is in order, the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, to whom it has been made shall grant the permission applied for, and shall cause the particulars to be entered in a register to be kept in his office.

(5) The applicant shall then, during and for a period of one year or such shorter period as the Court may under special circumstances allow to serve as a probationer with the pleader and in the Court in respect of whom and which, the said permission has been granted.

(6) During the period of probation aforesaid, the probationer shall work with the pleader in and outside Court. Such work shall be limited to acting only, and shall not extend to pleading, and the general nature thereof shall be that of assisting the pleader in his professional work as pleader.

(7) During the period of probation aforesaid, the probationer shall also attend the Court regularly and shall notify his attendance therein daily to such officer as the District Judge, in the case of service at the headquarters of a district, or the senior Munsif, in the case of service at the headquarters of a subdivision, or in an outlying munsifi or the Chief Judge, in the case of service in the Court of Small Causes, Calcutta, may appoint for the purpose. It shall be the duty of such officer to note the attendance of the probationer in a register to be kept for the purpose.

(8) The probationer shall ordinarily work with one and the same pleader and in the same district throughout the period of his probation, and the pleader shall ordinarily be one in continuous practice throughout such period. In cases where necessity may arise, the service may be with different pleaders, either in the same district or in a different district or districts, for successive periods, but the total period of probation must in no case be less than a year unless a shorter period has been allowed by the Court under sub-rule (7) above.

Provided that no such service shall be recognised, unless it has been with the previous permission of the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, obtained in the manner indicated in sub-rules (3) and (4) above:

Provided further that in the case of a change from a pleader in one district to a pleader in a different district, the permission of the High Court also for such a change has been previously obtained on an application made to it through the Judge of the district in which the probationer is for the time being serving.

**NOTE.**—If the Judgeship includes more than one executive district, the application is to be sent, through the District Judge in charge of all the districts comprising the Judgeship.

(9) During the period of probation aforesaid, the probationer may be excused absence for a portion or portions thereof, provided the pleader with whom or the Court in which the probationer is to serve is satisfied that there is good cause for such absence, and that the training of the probationer will not materially suffer therefrom. In any other case the deficiency will have to be made up by serving for such further period, not longer than the actual period of absence, as may be necessary in the opinion of the pleader or of the Court, as the case may be.

(10) A pleader who is permitted to take a probationer will be allowed to charge a fee of Rs. 50 for his remuneration for the training he gives to the probationer, and may refuse to give a certificate of his willingness to take the probationer unless he receives the same in advance. In case, however, of the pleader not being able to retain the probationer for the full period of probation with him, the probationer will be entitled to a refund of an amount in proportion to the uncompleted portion of the service with such pleader.

(11) Every probationer shall, during the whole period of his probation, be exclusively employed by the pleader in his proper business and practice as such.

(12) On completion of the period of probation as aforesaid, the probationer shall file with the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, a certificate in Form A of the schedule from the pleader and a certificate in Form B of the schedule from the Judge of the district or the senior Munsif in the subdivision or in an outlying munsifi or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, and the certificates shall be forwarded by the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, to the Registrar of the High Court, Appellate Side, either along with or in continuation of his application for admission as a pleader mentioned in rule 828 *post*; provided that the Judge of the district or the senior Munsif of the subdivision, or outlying munsifi or the Chief Judge, Court of Small Causes, Calcutta, should he entertain a doubt as to whether the probationer has diligently worked as such, may, before giving such certificate, subject the probationer to an examination as regards procedure, and should he not be satisfied as a result of that examination that the probationer has served with diligence, may direct him to continue as a probationer for a further period not exceeding three months. •

#### SCHEDULE.

##### Form A. •

I, A. B., Pleader, practising in \_\_\_\_\_ certify that X, Y, has duly and faithfully served me as a probationer for the period required by the rules\* and, in my opinion, he is a fit and proper person to be admitted as a pleader in the Courts subordinate to the High Court.

Date \_\_\_\_\_

Signature of the Pleader. \_\_\_\_\_

\*In the case of a probationer who has served more than one pleader, instead of the words "the period required by the rules" the actual period for which the probationer served each of them shall be stated, and a certificate shall be obtained from each of such pleaders.

ments in *original* referred to in clauses (1) and (2) of rule 820, together with the receipt of the officer in charge of a Government Treasury for the fee required previous to examination by rule 827.

NOTE.—An application for leave to appear at an examination for mukhtarship should be regarded as made to a Court in its administrative capacity, and should not be held liable to stamp duty. Such applications should, therefore, be received on plain paper.

**823.** The District Judge shall thereupon satisfy himself of the sufficiency of the certificates of character presented by all mukhtarship candidates, and shall satisfy himself as to the identity of such candidates, and shall, on or before the 1st December, transmit to the 'Committee all such applications with the documents accompanying, together with a list of such applications and annexures and with his opinion in each case as to the sufficiency of the testimonials produced and any other information he may think it needful in any case to communicate.

**824.** The Examiners shall, on receipt of the applications from the District Judge, take the case of each candidate, with the report of the District Judge, into their consideration, and shall determine whether or not the candidate is possessed of the necessary qualifications. If the candidate is found qualified the 'Committee shall cause his name, the name of his father, his age and place of residence, and other needful particulars to be entered in a register of persons permitted to appear at the examination.

**825.** (1) An extract from the register shall be forwarded to the District Judge with a declaration that the candidate is permitted to appear at the next ensuing examination at....., for delivery to him. The District Judge shall cause a notice of his having received such extracts to be stuck up in his court-house and shall deliver them to the candidates on application.

(2) The District Judge, in carrying out this rule and rules 822 and 823, shall conform to such instructions as he may receive from the 'Committee through their Chairman or Secretary.

**826.** Every candidate for examination shall produce to the 'Committee the extract from the register when he presents himself for examination.

### (C) Fees for Examination.

**827.** (1) The fees payable by candidates for the Mukhtarship Examination shall be Rs. 20 previous to examination.

(2) If in any case, a candidate for mukhtarship after having paid the fee required to be paid before examination, and having been found duly qualified and permitted to appear at any examination, is prevented from appearing, one-half of the fee paid by him will be refunded on a written application. If such a candidate apply in writing to the Committee within one month from the date of such examination to be allowed to appear at the next examination, his application shall be allowed on his paying one-half of the fee.

(3) Should a mukhtarship candidate be refused admission to the examination, the fee paid by him will be refunded on a written application accompanied by a certificate from the Secretary to the Committee to that effect.

### 3. Admission to practice of legal practitioners.

**828.** Any person who is qualified under these rules, and desires to be admitted to practice, shall present an application, for the purpose, in the prescribed form No. (M) 14A of the district in which the applicant intends ordinarily to practise, or to the Chief Judge, Court of Small Causes, Calcutta, if he desires ordinarily to practise in that Court or in the Courts of the Presidency Magistrates, Calcutta.

**829.** The application shall be accompanied by (a) a receipt showing the payment by the applicant into the Government Treasury of the district or, in case he intends ordinarily to practise in the aforesaid Courts in Calcutta, into the Imperial Bank of India, Calcutta, of the fee prescribed by rule 836, (b) the certificate of the committee showing that he has passed the Mukhtarship Examination or, as the case may be, his LL.B. diploma or provisional LL.B. certificate, (c) a stamp paper of proper value according to Schedules I and II of the Legal Practitioners Act, 1879, and in the case of an admission as a pleader, except where an application is made under the proviso to this rule, also (d) the certificates in Forms A and B prescribed by sub-rule (12) of rule 815.

Provided that a person desiring to be admitted as a pleader, may apply as aforesaid for such admission not earlier than two months before the date on which the period of his probation is due to be completed but he shall not be admitted as a pleader until the receipt of the certificates prescribed by sub-rule (12) of rule 815 on completion of the probationary period.

**830.** The District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, shall, on receipt of the application, cause a notice showing the applicant's name and place of abode together with his father's name and place of abode to be affixed in some conspicuous place of the court house, and forward a copy thereof, together with the application and the papers, as aforesaid, to the Registrar, High Court, Appellate Side, with a forwarding letter in Form No. (M) 14, with such remarks as he may think fit to make thereon.

**NOTE 1.**—Except in a case where a person applies for enrolment as a pleader under the High Court after practising as such under any other High Court or when a person applies for enrolment through the Judge of the district other than that in which he has served his probationship, no identification of the applicant for enrolment is necessary and therefore paragraph 3 of the form No. (M) 14 is not required to be filled in.

**NOTE 2.**—Where an application is made under the proviso to rule 829, the certificates in forms A and B shall not be forwarded to the High Court with the application but the fact that the applicant has complied with the proviso should invariably be verified by the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, before forwarding the application to the High Court. Such certificates shall be sent only after the completion of the probationary period.

**831.** The High Court may call for evidence of the respectability of the applicant in any case in which it may be deemed necessary.

### 4. Certificates and their Renewal.

**832.** On receipt of the application, the Registrar, of the High Court shall cause the copy of the notice, referred to in rule 830, to be affixed in some conspicuous place of the court building for at least six weeks. If the application is in order, and there is no objection to the applicant being admitted by the High Court, the Registrar shall, after the expiry of the aforesaid period of six weeks from the date of posting of the notice in the

High Court, cause his name to be entered in the proper register, and shall grant him a certificate as required by Section 7 of the Legal Practitioners Act, 1879, authorising him to practise, up to the end of the year in which it is granted, in the Courts and offices specified in the certificate.

**833.** The certificate shall bear the number assigned to it in the register and shall be signed by the Registrar and forwarded to the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, to be delivered to the applicant.

**834.** Every application by a pleader or mukhtar for the renewal of his certificate under section 7 of the Legal Practitioners' Act, 1879, must be made through the Judge presiding over the Court in which he ordinarily practises, and unless the High Court otherwise orders shall be made not later than 1st December. The Munsif, Subordinate Judge, or Judge of a Small Cause Court shall forward the application for a renewed certificate to the District Judge. If for any reason the officer forwarding the application considers that the certificate should not be renewed, he shall submit a report to that effect to the District Judge.

NOTE 1.—See Note to rule 828.

NOTE 1.—The Chief Presidency Magistrate, Calcutta, is authorised under sec. 7 of the Legal Practitioners Act, 1879, to renew the certificates of practice of pleaders and mukhtars at the time ordinarily practising in the jurisdiction of any of the Presidency Magistrates' Courts in Calcutta. (Notification, dated the 1st February, 1900.)

NOTE 2.—In granting renewed certificates under clause (c), Schedule II, Part I, of the Legal Practitioners' Act, XVIII of 1879, the words "except the Calcutta Small Cause Court" should be inserted at the end of paragraph 2 of the certificates in the case of pleaders who are not graduates in law of one of the Universities mentioned in rule 815(2) *ante*.

**835.** Certificates may be renewed under sec. 7 of the Legal Practitioners Act (XVIII of 1879), by the Judge of the District Court or the Chief Judge, Court of Small Causes, Calcutta, or other officer authorised to renew certificates whether the value of the stamped paper on which the renewed certificate is to be issued (as prescribed by the second schedule of the Act) is the same as, or different from, the value of that on which the certificate in force of the particular pleader or mukhtar was issued.

NOTE.—The renewing officer shall check the entry in column 5 of the register in Form No. (R) 35 with the value of the stamp paper on which the certificate is renewed and then put his initial in column 6. If for want of time he is unable to check the entries in column 5, he is authorised to delegate his duty to the Sheristadar or head clerk or both. In that case the checking officer will after scrutiny certify that he has found the entries and the stamps to be correct and the renewing officer will then put his initial on the strength of the certificate.

**836.** (1) The fees payable on application for enrolment shall be as follows:—

	Rs.
Pleader	... 25
Mukhtar	... 10

NOTE.—As to value of stamps for certificates, whether original or renewed, see section 25 of the Legal Practitioners' Act, 1879, and the second schedule to the Act.

(2) Where in any case an applicant for enrolment as a pleader or mukhtar, after having paid the prescribed fee, is not enrolled for any reason, the fee paid by him may be refunded under orders of the Registrar, High Court, Appellate Side, on a written application made to him in this behalf.

**337.** A pleader or mukhtar desirous of practising in any district other than that in which his certificate was last renewed, shall apply to the District Judge of such district for the entry of his name in the district roll of pleaders and mukhtars. Similarly, a pleader ordinarily practising in the Court of Small Causes, Calcutta, who desires to practise in any district or *vice versa* shall apply to the District Judge concerned or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, for the entry of his name in the district roll of pleaders or in the roll of pleaders maintained by the Chief Judge. Before complying with the application the District Judge or the Chief Judge shall satisfy himself by such enquiries as he may think fit, as to the applicant's identity and previous good conduct.

**338.** A pleader or a mukhtar, enrolled as such by the Calcutta High Court before the 15th August, 1947, and practising in any district within the jurisdiction of the Dacca High Court after that date, who practise in any Court within the jurisdiction of the Calcutta High Court shall apply to the Registrar, High Court, Appellate Side, through the Judge of the district in which the Court where he practise is situated, or through the Chief Judge, Court of Small Causes, Calcutta, in the case of a pleader desiring to practise in that Court, or through the Chief Presidency Magistrate, Calcutta, in the case of a pleader or mukhtar desiring to practise in the Courts of the District Magistrates, Calcutta, for the entry of his name in the district roll of pleaders or mukhtars, or in the roll of pleaders or mukhtars maintained by the Chief Judge or the Chief Presidency Magistrate, Calcutta, as the case may be. Any such application shall be accompanied by the applicant's renewed certificate for 1947 or, in the event of his certificate having expired, renewed for any subsequent year by a competent authority under the Dacca High Court, that renewed certificate, and a stamp paper of proper value for the renewal of his certificate for 1955. He shall also furnish the following application—

(1) proof of—

- (a) his having removed his name from the roll of pleaders and mukhtars, as the case may be, of the Dacca High Court;
- (b) his acquisition of, or intention to acquire, Indian Nationality;
- (c) the circumstances in which and the methods by which he entered India; and
- (d) difficulty or impossibility of practising under the Dacca High Court on account of such political conditions or such other circumstances as this Court may consider sufficient; and

- (2) an affidavit of two respectable persons, who knew him acting as a practising pleader or a mukhtar of the place in Pakistan, who are known to the District Judge or the Chief Judge, Court of Small Causes, Calcutta, or the Chief Presidency Magistrate, Calcutta, as the case may be, within whose jurisdiction he may desire to practise, to establish his identity.

Subject to the provisions of this rule being complied with, the District Judge or the Chief Judge, Court of Small Causes, Calcutta, or the Chief Presidency Magistrate, Calcutta, as the case may be, may be authorised to renew the certificate of the applicant for 1955, after satisfying himself by such enquiries as he may think fit as to the applicant's previous good conduct.

[No. 70, dated the 27th November, 1963. Notification No. 8067E, dated the 21st December, 1961, and No. 9047E, dated the 7th December, 1962.]



High Court, cause his name to be entered in the proper register, and shall grant him a certificate as required by Section 7 of the Legal Practitioners Act, 1879, authorising him to practise, up to the end of the year in which it is granted, in the Courts and offices specified in the certificate.

**833.** The certificate shall bear the number assigned to it in the register and shall be signed by the Registrar and forwarded to the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, to be delivered to the applicant.

**834.** Every application by a pleader or mukhtar for the renewal of his certificate under section 7 of the Legal Practitioners' Act, 1879, must be made through the Judge presiding over the Court in which he ordinarily practises, and unless the High Court otherwise orders shall be made not later than 1st December. The Munsif, Subordinate Judge, or Judge of a Small Cause Court shall forward the application for a renewed certificate to the District Judge. If for any reason the officer forwarding the application considers that the certificate should not be renewed, he shall submit a report to that effect to the District Judge.

NOTE 1.—See Note to rule 828.

NOTE 1.—The Chief Presidency Magistrate, Calcutta, is authorised under sec. 7 of the Legal Practitioners Act, 1879, to renew the certificates of practice of pleaders and mukhtars at the time ordinarily practising in the jurisdiction of any of the Presidency Magistrates' Courts in Calcutta. (Notification, dated the 1st February, 1900.)

NOTE 2.—In granting renewed certificates under clause (c), Schedule II, Part I, of the Legal Practitioners' Act, XVIII of 1879, the words "except the Calcutta Small Cause Court" should be inserted at the end of paragraph 2 of the certificates in the case of pleaders who are not graduates in law of one of the Universities mentioned in rule 815(2) *ante*.

**835.** Certificates may be renewed under sec. 7 of the Legal Practitioners Act (XVIII of 1879), by the Judge of the District Court or the Chief Judge, Court of Small Causes, Calcutta, or other officer authorised to renew certificates whether the value of the stamped paper on which the renewed certificate is to be issued (as prescribed by the second schedule of the Act) is the same as, or different from, the value of that on which the certificate in force of the particular pleader or mukhtar was issued.

NOTE.—The renewing officer shall check the entry in column 5 of the register in Form No. (R) 35 with the value of the stamp paper on which the certificate is renewed and then put his initial in column 6. If for want of time he is unable to check the entries in column 5, he is authorised to delegate his duty to the Sheristadar or head clerk or both. In that case the checking officer will after scrutiny certify that he has found the entries and the stamps to be correct and the renewing officer will then put his initial on the strength of the certificate.

**836.** (1) The fees payable on application for enrolment shall be as follows:—

	Rs.
Pleader	... 25
Mukhtar	... 10

NOTE.—As to value of stamps for certificates, whether original or renewed, see section 25 of the Legal Practitioners' Act, 1879, and the second schedule to the Act.

(2) Where in any case an applicant for enrolment as a pleader or mukhtar, after having paid the prescribed fee, is not enrolled for any reason, the fee paid by him may be refunded under orders of the Registrar, High Court, Appellate Side, on a written application made to him in this behalf.

**837.** A pleader or mukhtar desirous of practising in any district other than that in which his certificate was last renewed, shall apply to the District Judge of such district for the entry of his name in the district roll of pleaders and mukhtars. Similarly, a pleader ordinarily practising in the Court of Small Causes, Calcutta, who desires to practise in any district or *vice versa* shall apply to the District Judge concerned or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, for the entry of his name in the district roll of pleaders or in the roll of pleaders maintained by the Chief Judge. Before complying with the application the District Judge or the Chief Judge shall satisfy himself by such enquiries as he may think fit, as to the applicant's identity and previous good conduct.

**838.** A pleader or a mukhtar, enrolled as such by the Calcutta High Court before the 15th August, 1947, and practising in any district within the jurisdiction of the Dacca High Court after that date, who practise in any Court within the jurisdiction of the Calcutta High Court shall apply to the Registrar, High Court, Appellate Side, through the Judge of the district in which the Court where he practise is situated, or through the Chief Judge, Court of Small Causes, Calcutta, in the case of a pleader desiring to practise in that Court, or through the Chief Presidency Magistrate, Calcutta, in the case of a pleader or mukhtar desiring to practise in the Courts of the Magistrates, Calcutta, for the entry of his name in the district roll of pleaders or mukhtars, or in the roll of pleaders or mukhtars maintained by the Chief Judge or the Chief Presidency Magistrate, Calcutta, as the case may be. Any such application shall be accompanied by the renewed certificate for 1947 or, in the event of his certificate having been renewed for any subsequent year by a competent authority under the provisions of the renewed certificate, and a stamp paper of proof for the renewal of his certificate for 1955. He shall also furnish an application—

(1) proof of—

- (a) his having removed his name from the roll of pleaders or mukhtars, as the case may be, of the Dacca High Court;
- (b) his acquisition of, or intention to acquire, Indian Nationality;
- (c) the circumstances in which and the methods by which he entered India; and
- (d) difficulty or impossibility of practising under the provisions of the renewed certificate on account of such political conditions or such other circumstances as this Court may consider sufficient; and

- (2) an affidavit of two respectable persons, who knew him acting as a practising pleader or a mukhtar of the place in Pakistan, who are known to the District Judge or the Chief Judge, Court of Small Causes, Calcutta, or the Chief Presidency Magistrate, Calcutta, as the case may be, within whose jurisdiction he may desire to practise, to establish his identity.

Subject to the provisions of this rule being complied with, the District Judge or the Chief Judge, Court of Small Causes, Calcutta, or the Chief Presidency Magistrate, Calcutta, as the case may be, may be authorised to renew the certificate of the applicant for 1955, after satisfying himself by such enquiries as he may think fit as to the applicant's previous good conduct.

**Explanation.**—As regards “previous good conduct”, an affidavit or a certificate of character from a respectable person or from a legal practitioner, preferably of the Court wherein the applicant last practised, may be demanded.

**Note.**—This rule shall remain in force up to the 31st December, 1956.

**839.** (1) If any person having obtained the degree entitling him to be enrolled as a probationer in accordance with rule 815, or the certificate entitling him to be admitted and enrolled as a mukhtar, shall fail to apply for such enrolment as a probationer or as a mukhtar, as the case may be, for a period of one year from the date of his diploma or certificate, he shall not be enrolled unless, by special order of the High Court, the time for such application be extended.

(2) A person who shall fail to apply for admission and enrolment as a pleader within one year from the date of completion of the probationary period prescribed by rule 815, shall not be entitled to apply for such admission and enrolment unless with the special leave of the High Court.

**840.** If any person having been admitted and enrolled as a pleader or mukhtar shall neglect to take out a certificate, or having obtained a certificate, shall fail to renew it for a period of three years, he shall not be entitled to receive a certificate, or to have his certificate renewed, without further orders of the High Court and shall be required to produce satisfactory testimonials to his character during the interval. Applications made to the Court in this regard shall be made in the prescribed form Form No. (M) 14B.

**NOTE.**—When a pleader or mukhtar who has not been suspended from practice applies for the renewal of his certificate after the expiry of the year for which it was last renewed, he should state in his affidavit which should be executed on an impressed non-judicial stamp under Art 4, Sch I, of the Indian Stamp Act explaining the delay in applying for renewal that he has not practised in any Court since the expiry of the period for which his certificate was last renewed

**841.** Any person who shall hold any appointment or be engaged in any occupation, trade or business, at the time of his application for admission as a pleader or mukhtar, shall state the fact in his application for admission; and the High Court may refuse to admit such person or may pass such other orders on it as it thinks proper.

**842.** Pleaders and mukhtars shall not, while practising as such, be ~~debarred~~ thereby from holding any appointment or engaging themselves in any occupation, trade or business but a person who, having been admitted as a pleader or mukhtar, accepts an appointment or engages himself in an occupation, trade or business, shall, within one month of accepting such appointment or so engaging himself, make an application in the prescribed form [Form No. (M) 14-C] to the Registrar, High Court, Appellate Side through the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, and shall state whether or not he prays for leave to suspend practice as a pleader or mukhtar, and the High Court may either grant such leave, or may, if such appointment, occupation, trade or ~~business~~ be derogatory to a practising member of the legal ~~profession~~ <sup>profession</sup> of his professional duties ~~be~~ <sup>gaged, or</sup>

**27th, Rule 842—**

**No. 71.**

Let the words “or may” in lines 14-15 of the rule.

No. 71, dated the 27th November, 1963. File No. 4R—25 of 1962.1

mukhtars, if  
Chief Presi-

Magistrate, Calcutta.

**843.** Any person, who having obtained leave or having been refused renewal of his certificate under the last preceding rule, desires, on relinquishing his appointment or ceasing to be engaged as aforesaid, to be readmitted to practice, shall apply in the prescribed form [Form No. (M) 14-B] through the District Judge or the Chief Judge, Court of small Causes, Calcutta, as the case may be, to the High Court for permission, and shall furnish with his application such evidence as the District Judge or the Chief Judge, Court of Small Causes, Calcutta, as the case may be, shall require of good conduct and character during the period for which he obtained leave or his certificate was not renewed.

**844.** It shall ordinarily be considered unprofessional conduct on the part of a pleader or mukhtar to act professionally in connection with any matter or litigation concerning or arising out of an extraneous employment that he may have held or an occupation, trade or business in which he may have engaged himself.

**845.** (1) No pleader shall enter into or continue in professional partnership with any person other than a pleader holding a certificate under section 7 of the Legal Practitioners Act (XVIII of 1879), or be party to any agreement to share professional earnings with any person other than in accordance with the provisions of this rule.

(2) No pleader shall enter into a professional partnership with another pleader or become a member of an existing professional partnership without the permission of the High Court. A pleader who desires to enter into or become a member of such partnership shall make an application in that behalf to the High Court. Such application shall be made through a District Judge, or the Chief Judge of the Court of Small Causes, Calcutta, and shall give in respect of each partner particulars of his name, of the date of his admission as a pleader, of the Court by which his current certificate was renewed, and the Courts in which he is enrolled.

(3) Every application by a pleader who is a member of a professional partnership for renewal of his certificate under section 7 of the Legal Practitioners Act (XVIII of 1879) shall be signed by the pleader personally, and shall give in respect of each partner the particulars mentioned in sub-rule (2).

**846.** If a Pleader or Mukhtar, enrolled as such by the High Court, gets himself enrolled in a Court in a foreign country, his name may be removed from the Roll of Pleaders or Mukhtars, as the case may, if the High Court so decides.

## CHAPTER 39

### ANNUAL RENEWAL OF LEGAL PRACTITIONERS' CERTIFICATES, AND RETURNS OF THE SAME.

**847.** District Judges, the Chief Judge, Court of Small Causes, Calcutta, and the Chief Presidency Magistrate, Calcutta, shall submit to the High Court, during the 1st week of February, a return in form No. (S)33 in Vol. II, showing the names of the Pleaders and the Mukhtars whose certificates have been renewed by them for the current calendar year as well as the names of those who have not renewed their certificates up to the date of submission of the return. Separate return should be submitted of (1) Pleaders and (2) Mukhtars, and the first part of each return should show, in order of seniority, the names and particulars of those who have renewed their certificates, and the latter part, the names and particulars of those who have not done so.

**848.** A list containing the names of the Pleaders and the Mukhtars who have not renewed their certificates up to the date of submission of the annual return to the High Court under rule 847 shall be posted in the Court house with an intimation that they are not entitled to practice and that they are liable to penalties if found practising without having renewed their certificates. A copy of the list shall be sent by the District Judge to each Court within its judgeship for information. If the certificate of any Pleader or Mukhtar whose name appears in the list is subsequently renewed, his name shall be promptly reported to the High Court by the District Judge, the Chief Judge or the Chief Presidency Magistrate, Calcutta, as the case may be and the Courts in the judgeship informed of the fact by the District Judge.

**849.** District Judges will inform the District Magistrate of the names of any pleaders and mukhtars who may enrol themselves in their Courts, or may renew their certificates.

**850.** Similarly, the Chief Judge Court of Small Causes, Calcutta, will inform the Chief Presidency Magistrate, Calcutta, of the names of pleaders who may enrol themselves in his Court or, whose certificates may be renewed by him.

## CHAPTER 40

### RULES REGARDING THE FUNCTIONS, ETC., OF MUKHTARS FRAMED UNDER SEC. 11 OF ACT XVIII OF 1879.

**851.** The following are the functions, powers, and duties of mukhtars practising in the subordinate Courts:

(1) To take instructions from his client and communicate with him.	
(2) To appoint and instruct advocates, vakils, pleaders, or attorneys; and to attend the Court during the trial of the client's case.	
(3) To inspect* and take copies of records.	
(4) To present a plaint (including any documents that may be attached to it), and receive it back if it be rejected or returned.	Civil Procedure Code, sec. 26; Or. 4, r. 1, Or. 6, r. 17; Or. 7, rr. 10 and 14.
(5) To draw, and annex to the plaint, a memorandum of the documents which are attached to it; and present plain copies of the plaint or concise statements, as the case may be, and enter a list of documents to be relied upon by the plaintiff as evidence.	Or. 7, rr. 9 and 14.
(6) To produce documents for his client, and receive them back again if they be rejected or returned.	Or. 5, r. 7; Or. 7, r. 17; Or. 11, r. 14; and Or. 13, rr. 1, 4, 6 and 9.
(7) To tender a written statement, and receive it back again if it be rejected or returned.	Or. 8, rr. 1 and 9; and see also Or. 6, rr. 16 and 17.
(8) To apply for and receive process, and communicate with the serving officer or the Small Cause Court, as the case may be, with a view to the service of the same.	Sec. 27; Or. 5, rr. 21 and 22; Or. 9, rr. 4 and 6.
(9) To file interrogatories for delivery through the Court ..	Or. 11, rr. 1, 2 and 4.
(10) To file affidavits .. .. .	Or. 11, rr. 12 and 13.
(11) To file notices for service through the Court and accept* such notices on behalf of his client.	Or. 11, r. 17.
(12) To apply for an order of inspection, and inspect books, documents, etc., on behalf of his client.	Or. 11, r. 18.
(13) To apply to the Court to send for a record .. ..	Or. 13, r. 10.
(14) To apply for summonses to witnesses .. ..	Or. 16, r. 1.
(15) To apply for an adjournment .. ..	Or. 17, r. 1.
(16) To apply for execution, and for that purpose to file a tabular statement, inventory, or description of property.	Sec. 50; Or. 21, rr. 10, 11, 12 and 13; and Or. 45, r. 15.

(17) To apply for leave to bid on behalf of a decree-holder ..	Or. 21, r. 72.
(18) To apply for the discharge from the civil prison of the judgment-debtor.	Sec. 58.
(19) To apply to place the name of the representative of a deceased party on the record.	Or. 22, rr. 3 and 4.
(20) To apply to withdraw or adjust a suit (on producing a special power so to do).	Or. 23, rr. 1 and 3.
(21) To apply for a commission to examine witnesses, for a local investigation, to examine accounts, or to make a partition.	Or. 26, rr. 2, 9, 11 and 13.
(22) To apply to dispauper a suitor <i>in forma pauperis</i> ..	Or. 33, r. 9.
(23) To apply for an arrest before judgment .. ..	Or. 38, r. 1.
(24) To apply for an attachment before judgment .. ..	Or. 38, r. 5.
(25) To apply for an injunction .. ..	Or. 39, rr. 1 and 2.
(26) To file an agreement or case stated under Or. 36, rr. 1 and 2, of the C. P. Code (on producing a special power so to do).	Or. 36, rr. 1, 2 and 3.
(27) To file a memorandum of appeal or a cross-objection, duly signed and certified by a pleader, and receive it back again if it be rejected or returned.	Or. 41, rr. 1, 3 and 22.
(28) To pay money into, or deposit money in, Court, and receive and give receipts for payment of money out of Court.	Or. 16, rr. 2 and 4; Or. 21, rr. 1, 39, 84 and 85; Or. 24, rr. 1 and 4; and Or. 45, r. 7.
(29) To apply for an order of reference to arbitration (on producing a special power so to do).	Arbitration Act, 1940.
(30) To apply to file an award made, or special case stated by arbitrators appointed in a suit in Court (when empowered by the arbitrators so to do).	Ditto.
(31) To apply to have an award remitted to the arbitrators or set aside (on producing a special power so to do).	Ditto.
(32) To apply to file an agreement in writing that any matter in difference between two or more persons shall be referred to arbitration (on producing a special power so to do).	Ditto.
(33) To apply to file an award made without the intervention of the Court (on producing a special power so to do).	Ditto.
(34) To file applications by judgment-debtors to set aside sale on deposit of decretal amount and penalty.	Or. 21, r. 89, and sec. 174 of the Bengal Tenancy Act.
(35) To deposit rent, under sec. 61 of the Bengal Tenancy Act (VIII of 1885).	
(36) To apply to establish a right to measure land, under sec. 91 of the Bengal Tenancy Act (VIII of 1885).	
(37) To apply to have lands measured under sec. 103 of the Bengal Tenancy Act (VIII of 1885).	
(38) To apply for execution and sale under the Bengal Tenancy Act (VIII of 1885).	
(39) To apply for foreclosure, or to deposit money under Bengal Regulation I of 1798, or Bengal Regulation XVII of 1806.	

(40) To apply for a certificate or for the revocation of a certificate, under Act VIII of 1890, or under Part X of Act XXXIX of 1925, if unopposed.

(41) To apply for probate or letters of administration, if unopposed.

(42) To file an application on behalf of a person applying to be declared insolvent.

Sec. 12 of the Provincial Insolvency Act, V of 1920.

*Note 1.*—When any document (of whatever nature) is required by law to be signed or verified, or both signed and verified, it is incumbent upon the mukhtar to see that the same is properly signed or verified, or signed and verified before filing or presenting the same; and where any application is required to be made upon affidavit, or affirmation, or verified statement, it is not to be entertained unless so made.

*Note 2.*—When a plaint or a written statement is presented or tendered by a mukhtar [see clauses (4) and (7)] an endorsement shall be made thereupon by the officer of the Court receiving the same in the following terms:—

"Presented by A. B. Mukhtar."

The endorsement shall be signed by such officer and by mukhtar.

**852.** A mukhtar shall not be allowed to address the Court except for the purpose of stating the nature and effect of his application, or, without the leave of the Court, specially given to offer any legal argument or examine witnesses.

**853.** Every mukhtar who has acted for a suitor in any appeal or matter shall be bound to furnish to his client, within 15 days after the decree or order of the Court has been signed, an account in form hereto annexed, and in a language which the client understands, showing all receipts and disbursements which have passed through his hands in the cause; and to such account shall be annexed a receipt signed by the advocate, vakil or pleader for all fees paid to him.

*A. B., in account with C. D., Mukhtar of Subordinate Court of.*

Cr.

Dr.

19	Rs. a. p.	• 19	Rs. a. p.
<i>1st January.</i>		<i>January.</i>	
To money advanced .. ..		To paid for (here state particulars).	
		To my fee for (here state the particular acts he has done in the matter).	
		To fee paid to E. F. advocate, vakil, or pleader for, etc., etc.	



**854.** The following are the functions, powers and duties of mukhtars of the High Court practising in Civil Courts subordinate to the High Court, subject to the instructions of their client:—

To communicate with his client.

To instruct advocates, vakils, pleaders, or attorneys during the trial of the client's case.

To make such applications as can be made to an officer of the Court, but not to the Court itself, provided that he shall not be entitled to apply to inspect records.

To pay money into, or deposit money in, Court and, where specially empowered by his mukhtarnama, to receive and give receipts for payment of money out of Court.

To deposit security when required under Or. 41, r. 10, C. P. Code.

To apply for copies of any paper from the record of any case and receive them after paying fees.

To identify persons before the Court officers.

To communicate with the Court officers for information regarding any case.

} Or. 16, rr. 2 and 4; Or.  
21, rr. 1, 39, 84 and  
85; Or. 24, rr. 1 and 4,  
and Or. 41, r. 10 of  
C. P. Code.

**855.** The instructions contained in rule 853 shall also apply to mukhtars of the High Court practising in Civil Courts subordinate to the High Court.

## CHAPTER 41

### RULES REGARDING VAKALATNAMAS AND MUKHTARNAMAS.

**856.** Vakalatnamas and mukhtarnamas, whether executed by principals or their attorneys and agents and mukhtarnamas under the authority of which vakalatnamas are executed, shall not be required to be verified on oath. The responsibility in regard to all such documents being properly and correctly executed shall rest entirely with the legal practitioners concerned. This rule does not apply to cases in which only mukhtars or agents not duly certificated under any law for the time being in force are employed. In all such cases the mukhtarnamas shall be verified on oath.

**857.** Advocates practising in the High Court shall note on their vakalatnamas the names of the mukhtars or other persons from whom the vakalatnamas are received.

**858.** The appointment of a mukhtar in addition to a pleader cannot be authorised on the vakalatnama appointing the latter, but only on a separate document drawn as a mukhtarnama and *vice versa*.

**859.** No advocate, vakil or pleader without accepting in writing a vakalatnama (and filing it if it be not already filed) shall act in any case.

**860.** No advocate, vakil or pleader shall plead in any case unless he has (a) been engaged for that purpose by another advocate, vakil or pleader duly appointed to act for the party or (b) filed a memorandum of appearance under Or. 2, r. 4, C. P. Code.

**861.** When the party cannot sign his or her name, the *vakalatnama* or *mukhtarnama* must be endorsed as follows:—

I, A.B., do hereby appoint C.D., advocate/vakil/pleader/mukhtar, to act for me in the abovenamed cause, in token whereof I have made my mark in the presence of E. F.

X. (Mark).

and I, E.F., do hereby attest the above mark as having been made in my presence by A.B., who is known to me.

X. (Signature).

NOTE.—The attester should be a person other than the person who writes the endorsement.

**862.** (1) The Courts accept vakalatnamas and mukhtarnamas on the responsibility of the legal practitioners filing them. An advocate, vakil or a pleader accepting a vakalatnama or a mukhtar accepting a mukhtarnama purporting to be executed by his client in person is bound to satisfy himself as best as he can that it was so executed. When it purports to be executed by a third party, on behalf of his client, he is bound to ascertain that such person has been duly empowered by the client to appoint an advocate, vakil, pleader or mukhtar, as the case may be, and has himself executed the document.

(2) No advocate, vakil or pleader shall receive a vakalatnama and no mukhtar shall receive a mukhtarnama from any person other than the party himself or his recognised agent within the meaning of the C. P. Code (Or. 3, r.2), or a person duly authorised by power-of-attorney

to act in his behalf, or his servant, relation or friend or an advocate or vakil or pleader or mukhtar specially authorised in writing in that behalf.

NOTE 1.—The authority should be in the following form:—

I, A. B., do hereby authorise C. D., my relation/servant/pleader, etc., to deliver the accompanying vakalatnama/mukhtarnama to E. F., my duly appointed advocate/vakil/pleader/mukhtar in the abovenamed cause.

X. (*Signature or thumb impression*).

NOTE 2.—The authority may be endorsed on the vakalatnama or mukhtarnama itself.

NOTE 3.—A vakalatnama received by the advocate, vakil or pleader, or in the case of a mukhtarnama, by the mukhtar, himself through the post from a person previously known to him, and with whose handwriting he is familiar, may be accepted.

(3) No advocate, vakil, pleader or mukhtar shall receive a vakalatnama and no mukhtar shall receive a mukhtarnama from a person who is unable to sign his or her name, unless it bears an endorsement in the form prescribed by rule 861 above.

(4) Where there are more parties than one and they desire to appear by separate vakalatnamas or mukhtarnamas, the vakalatnama or mukhtarnama of one may be received from any other similarly authorised, but if they desire to appear by one and the same vakalatnama or mukhtarnama, it may be received from any one of them or from a person duly authorised by any one of them without special authority from the others.

(5) Every advocate, vakil or pleader filing a vakalatnama and every mukhtar filing a mukhtarnama shall endorse on the back of it with his own hand the following particulars:—

- (i) the date of acceptance,
- (ii) the name of the person from whom it is received, and
- (iii) if such person is neither the client himself nor an advocate, vakil, pleader or mukhtar, the precise nature of the authority of that person with date of the authority.

NOTE 1.—Bench clerks and other officers who are authorised to receive vakalatnamas or mukhtarnamas must in every case satisfy themselves that the endorsements are properly made and contain all the particulars required by this rule.

The name of the person from whom the document is received must always be given and it is not enough to describe him as plaintiff or defendant. This applies also to each case of subsequent acceptance under sub-rule (6).

NOTE 2.—Subsequent acceptance of a vakalatnama or mukhtarnama already filed shall also be endorsed with the same particulars under the three heads (i), (ii) and (iii) [*vide* sub-rule (6)].

(6) A vakalatnama or mukhtarnama, which has been filed in Court may subsequently with the permission of the presiding Judge, be accepted by an advocate vakil, pleader or mukhtar, as the case may be, whose name appeared in it at the time when it was first filed; in the case of such subsequent acceptance the endorsement shall contain the same particulars as are required in the case of the first acceptance under sub-rule (5) above.

NOTE 1.—A pleader's registered clerk cannot transfer a vakalatnama to any pleader.

NOTE 2.—The several provisions of rule 862 apply to attorneys practising in the subordinate Courts.

(7) Where any member of a professional partnership referred to in rule 845 has accepted a vakalatnama or powers from any party to a litigation under the provisions of this rule, every other partner of the firm shall be

deemed in all respects, other than in respect of appearance in Court, to have accepted a vakalatnama or powers from such party and shall not be entitled to act or to plead in the same litigation for any other party.

(8) No vakalatnama or powers shall be accepted in the name of the firm constituting a professional partnership. The partners or such of them who may so desire, must accept the same individually.

**863.** A party who has retained an advocate, vakil, or pleader to appear and act for him and appointed him by execution of a vakalatnama cannot be heard in person, unless he first withdraws the vakalatnama and determines the appointment in the manner laid down in Or. 3, r. 4, C. P. Code.

**864.** (1) If no fresh vakalatnama is filed in execution cases, the party applying for execution must make a verified statement that the advocate, vakil or pleader filing the application for execution is the duly authorised advocate, vakil or pleader who acted for him in the original suit.

(2) As the powers conferred on an advocate, vakil or pleader cease on the enforcement of the decree, —that is on payment of the money (if money be decreed) into Court—an advocate, vakil or pleader in a suit cannot receive without any special power, sums realised in execution of the decree in such suit. The taking of the money out of Court is a subsequent and separate transaction and no advocate, vakil or pleader shall be allowed to receive or withdraw the same unless—

- (a) the vakalatnama under which he acted on behalf of his client in the suit or in the execution proceedings (where a fresh vakalatnama has been filed) contains a special clause enabling him to do so, or
- (b) there is a separate instrument distinctly conferring on him the authority to do so, or
- (c) the decree-holder has in his application for execution made a verified statement that a special power to receive money realised in execution had been conferred on the advocate, vakil or pleader who acted for him in the suit concerned and also a prayer that the money should on realisation be paid to the said advocate, vakil or pleader acting on his behalf under such power.

## CHAPTER 42

### DRESS.

**865.** Advocates of the High Court shall, when appearing in subordinate Courts, wear the same gown as in the High Court. Vakils, if any, appearing in such Courts, shall wear the same gown as they were entitled to prior to the 1st July, 1928.

The following distinctive dress shall be worn by legal practitioners of the subordinate Courts when appearing in Court:—

(1) *By Pleaders.*—(a) A black or white *chapkan*, *achkan* or buttoned-up long coat with trousers to match and a black alpaca gown of the cut and shape of a B.A. gown; or

(b) If European dress is worn, then a black coat with dark or white trousers and a black or dark coloured plain tie and the gown.

(2) *By Mukhtars.*—The same dress as that of pleaders in sub-rule (1) (a) and (b) but without the gown and with a black or white *choga* or a white *chaddar* crossed at the breast when wearing the *chapkan* or *achkan* in sub-rule (1) (a).

NOTE 1.—“White” in sub-rule (1) (a) comprises any plain dull colour like whitish, pale cream, natural, tussore, etc.

NOTE 2.—Pleaders have the option of wearing or not wearing their gowns when appearing before Magistrates or other executive officers discharging civil and revenue duties, who are not themselves required to wear gowns.

NOTE 3.—The wearing of a head dress, a turban or a *pugree* for pleaders and a *shamla* for mukhtars, when appearing in Indian dress, is optional.

## CHAPTER 43

### **RULES REGARDING PLEADERS' AND MUKHTEARS' LICENSED CLERKS UNDER SECTION 31A OF THE LEGAL PRACTITIONERS ACT, 1879 AS AMENDED BY THE BENGAL TOUTS ACT, 1942.**

**867.** In these rules (1) "licensed clerk" means a clerk who is employed by a pleader or mukhtear in connection with his legal business and is licensed as such under these rules, and, unless the context otherwise requires, the expression "pleader" includes a firm of pleaders and (2) "form" means a form prescribed by, and appended to, these rules.

A licensed clerk shall for the purpose of performing the ministerial part of the work of his employer have access to any Court in which the latter is authorised to practise and shall approach such of its ministerial officers as may in that behalf be designated by the presiding Judge of such Court but he shall not have access to the office of any Court.

No person employed by a pleader or mukhtear other than a licensed clerk shall be allowed access to any of the Courts of the district or to have any dealing with the ministerial officers attached thereto.

**870.** A licensed clerk desiring to have access to any ministerial officer referred to in rule 868 shall on demand produce his license.

**871.** Not more than one clerk in the case of a mukhtear, and not more than two clerks in the case of a pleader, shall ordinarily be licensed at a time. In special cases a pleader or a mukhtear may be allowed to employ any licensed clerk in excess of the number prescribed by this rule. Such cases shall be reported to the High Court for orders with a statement of the reasons for exceeding the prescribed number.

**872.** The licensed clerks of a firm of pleaders shall be deemed to be the common licensed clerks of each of the partners. No extra clerk for any partner in his individual capacity shall be licensed.

**873.** At district headquarter stations the licensing authority shall be the District Magistrate in the case of clerks of mukhteers ordinarily practising in the magisterial Courts and the District Judge or, if so authorised in this behalf by the District Judge any Judicial Officer at Sadar in all other cases, and at other stations such authority shall be the principal magisterial Court and the principal Civil Court respectively. Where there is more than one Civil Court of the same grade at any such station the power shall be exercised by the senior of the Judges of such Courts unless the District Judge otherwise directs. The Chief Judge, Court of Small Causes, Calcutta, and the Chief Presidency Magistrate, Calcutta, shall respectively, be the licensing authority, in respect of clerks of pleaders (and mukhteers, if any) ordinarily practising in the Court of Small Causes, Calcutta, and the Courts of Presidency Magistrates, Calcutta.

**874.** (1) Every application for the grant of a license to a clerk shall be made to the licensing authority by the pleader or mukhtear desiring to employ him. It shall be accompanied by a statement of the clerk proposed to be employed that he is willing to be taken in as a licensed clerk of the pleader or mukhtear concerned and that he will employ himself exclusively in the service of his employer for purpose of his *bona fide* legal business.

(2) Every person who desires to be licensed as a clerk shall be required to write in the presence of the licensing authority or any person appointed by him for the purpose and no person whose handwriting is illegible or bad shall be registered as a licensed clerk.

(3) Such application shall be on plain paper and shall contain—

(i) a certificate from the pleader or mukhtear that the person proposed is to the best of his belief fit to be so employed and will be employed *bona fide* in his own service and for the purpose of his legal business; and

(ii) the name or names of other licensed clerks, if any, under him.

(4) Any pleader or mukhtear applying for the registration of a clerk who was previously the licensed clerk of another pleader or mukhtear practising at any station, shall file with the application a certificate of conduct granted by the previous pleader or mukhtear, or give a satisfactory explanation for omitting to do so.

(5) No license shall be issued unless the licensing authority is satisfied that the clerk has sufficient knowledge of both English and Vernacular of the district in which the Court is situated and is fully conversant with the duties he has to perform.

(6) The licensing authority on receiving the application may—

(i) dispose of it at once when the person proposed is known to him; or

(ii) refer it to the Bar Association or the Mukhteers' Association, as the case may be, for their opinion, or

(iii) make such other enquiry as he thinks necessary.

(7) When the licensing authority is of opinion that the person proposed is a fit and proper person to be employed as a licensed clerk he shall enter his name in a register in Form No. (R)36A and issue to him a license in Form No. (M)35A. These licenses shall be strictly non-transferable and shall be returned at the close of each year for renewal. It is not necessary to issue a fresh card each year. The fact of renewal may be endorsed on the back of the old card.

(8) Each licensing authority shall at the beginning of the year send a copy of the register and of all subsequent additions and alterations therein immediately after they are made to the other licensing authority, if any, at the same station for information and for incorporation in his register.

**875.** Every application by a pleader or mukhtear for the annual renewal of his clerk's license shall be made to the licensing authority not later than 1st December and such application shall be made on plain paper. The licensing authority shall, unless he has reasons for not renewing it, cause the necessary entries to be made on the back of the license as a token of renewal by an officer to be authorised by him in this behalf.

**876.** If an application for renewal of license be made after the date prescribed by rule 875, it shall be accompanied by the explanation of the clerk in the form of a verified petition showing cause for the delay in applying for the renewal. When however, such application is made after the expiry of the period for which the license was last granted, it shall be accompanied by an affidavit explaining the delay in applying for renewal and stating that he has not since then worked as the clerk of any pleader or mukhtear in any Court.

**NOTE.**—The affidavit shall be executed on an impressed non-Judicial stamp under Article 4, Schedule I to the Indian Stamp Act, 1899.

**876A.** Any licensing authority in the case of a clerk registered by him may, for reasons to be recorded in writing and after hearing the clerk in his defence, order his suspension or removal from the register and the cancellation of his license, if he is guilty of any misconduct such as to render him unfit for the exercise of his duties or convicted of any offence involving moral turpitude. Every order of removal shall be communicated to the other licensing authorities of the district.

**NOTE.**—Proceedings taken against clerks under this rule shall be deemed to be administrative and not judicial proceedings.

**877.** Where the order of removal or discharge is passed by a Court subordinate to the District Judge, there shall be a right of appeal to the District Judge.

**878.** No application shall be made by a pleader or mukhtear for the grant of a license to a person whose name has been removed from the Register under the preceding rule, unless the said order of removal has been, by a subsequent order of competent authority, withdrawn or modified.

**879.** No person licensed as the clerk of one pleader or mukhtear shall do business in the Courts or offices thereof on behalf of any other pleader or mukhtear except in the case of illness or absence on leave of any licensed clerk, when the presiding Judge of the Court may, on the written requisition of the pleader or mukhtear under whom the clerk is engaged, permit the licensed clerk of another pleader or mukhtear to discharge the absentee's duties for a period not exceeding fifteen days.

**880.** No clerk licensed as the clerk of a particular pleader or mukhtear shall except in the absence of his employer, pass or hand over to another pleader or mukhtear any paper written by him to be filed in a case unless such paper also bears his employer's signature.

**881.** The rules regarding registration of pleaders' clerks shall also apply to the clerks of vakils and advocates ordinarily practising in subordinate Courts or in the Court of Small Causes, Calcutta, or in the Courts of the Presidency Magistrates, Calcutta.

**882.** The Courts shall allow the licensed clerks of pleaders or mukhteers practising before them—

- (1) to present applications signed by their masters, for—
  - (a) copies or information, (b) supply of forms, (c) return of documents, (d) repayment of deposits, (e) inspection, (f) all applications of a routine nature,
- (2) to take delivery of copies or information,
- (3) to tender money,
- (4) to identify persons verifying affidavits before the Sheristadar,
- (5) to take notes from cause lists, books of information, etc., regarding dates of hearing, processes and process-fees due, etc.

**883.** Clerks shall not be allowed to inspect or handle records.

#### *Rule regarding tout.*

**884.** Any person who acts as a clerk of a pleader or a mukhtear without a license granted to him in accordance with the above rules, shall be deemed to be a "tout" within the meaning of section 3 of the Act and in this respect the provisions of section 36 of the Act shall apply.



# **PART IX.—Establishment, Libraries, Office Rules, Administrative Work, &c., &c., and Annual Inspections**

## **CHAPTER 44**

### **ESTABLISHMENT.**

#### **1. Process-serving peons.\***

**885.** The process-serving establishment in each district shall consist of—

- (i) such number of permanent process-servers for each station of the district as shall be determined from time to time by the High Court with the approval of Government, and
- (ii) temporary peons, to be known as probationers whose number in each station shall not exceed 10 per centum of the number of permanent process-servers employed there and whose duties shall be to assist the process-servers and to perform the work of such of them as are on leave.

**NOTE.**—The term 'probationers' is applied to these temporary peons for convenience of nomenclature only. The Probation Rules issued in Government of West Bengal, Finance Department's notification No. 845F of the 19th March, 1953, will not apply to them.

**886.** There shall be a joint process-serving establishment for all Courts at the same station under the direct control of the nazir, who will be responsible to the various Courts for proper service and execution of processes made over to him for the purpose. A register of process-serving peons shall be maintained at each station in Form No. (R) 16, Volume II.

**887.** (a) A monthly salary of Rs. 25—1/2—35 shall be allowed to process-servers employed in the service or execution of processes of the Civil Courts in West Bengal. They shall also draw compensatory and other allowances as sanctioned from time to time for corresponding employees under Government.

(b) The temporary peons employed as probationers shall be on the time-scale pay of Rs. 20—1/4—25 per mensem: provided that a probationer may draw pay in the time-scale of Rs. 25—1/2—35 on being appointed to officiate in a permanent or temporary post of process-server (otherwise than in a leave vacancy) or on his appointment substantively against a permanent vacancy, even though he has not been confirmed. If permanent orderlies, office peons and duffries are employed as probationers, they shall draw the difference between Rs. 20—1/4—25 and their substantive pay as personal pay while they hold the temporary posts.

(c) The pay of a probationer appointed substantively to, or to officiate in, a post of process-server in the scale of Rs. 25—1/2—35 shall be fixed in accordance with the provisions of the West Bengal Service Rules, Part I.

**888.** (a) Leave vacancies among process-servers will not be filled. The work of men on leave will be performed by probationers without extra remuneration.

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\*The rules in this Chapter regarding remuneration of peons, number of peons, etc., have been made under Sections 20(iii) and 22 of the Court Fees Act.

(b) Temporary vacancies (not leave vacancies) in posts of permanent process-servers shall be filled by the promotion to officiate therein of probationers.

(c) Temporary posts of process-servers created in accordance with rule 896 will be filled by the promotion to officiate therein of probationers.

(d) Substantive vacancies in post of permanent process-servers shall be filled by the appointment thereto of probationers, provided that a probationer shall not be confirmed in a permanent post until he has completed at least two years' service on probation (previous service as a probationer or officiating service in a temporary or permanent post of process-server shall count as service on probation for the purpose of this rule).

(e) Leave vacancies in posts of probationers shall remain unfilled.

**889.** Vacancies (other than leave vacancies) occurring at any station in post of probationers shall be filled by the appointment thereto of enrolled candidates attached to that station. Any periods of duty in a post of probationer performed by an enrolled candidate, whether continuous or otherwise, will count towards the two years of probation prescribed by rule 888 (d) on the subsequent appointment to a permanent post.

**NOTE.**—On the promotion of a probationer to officiate in a post of process-server a temporary vacancy in a post of probationer will occur. This vacancy should be filled by the appointment of the senior enrolled candidate. On the reversion of the probationer to his old post on completion of his term of officiating service, the junior enrolled candidate acting as probationer should be discharged.

**890.** Deleted.

**891.** The Nazir at each station shall maintain a register of candidates enrolled under orders of the Judge-in-charge of the Nazarat for filling up vacancies in posts of probationers.

**892.** The Judge-in-charge shall at occasions require hold examinations in reading, writing and of a knowledge of the rules regarding service and execution of processes. Persons passing the test shall be placed on the enrolled list.

**NOTE 1.**—Orderlies, office peons and night-watchmen will be eligible as probationers, provided they possess the required qualification and pass the test.

**NOTE 2.**—Candidates found to be unfit and undesirable should be struck off the enrolled list.

**NOTE 3.**—The permanent appointment of peons lies with the District Judge.

**893.** A conduct register of peons with a sufficient number of pages for each shall be maintained in every nazarat and all cases of irregularity, failure of duty or misconduct on the part of a peon should be noted therein with details of action taken.

**NOTE.**—Punishment of every kind awarded to peons should be noted in the service book with particulars of the offence.

**894.** No peon should be retained or appointed for the service of the processes who cannot read and write sufficiently, or who is not capable of fully and intelligently carrying out the duties of a process-server.

**895.** Table I below gives the minimum number of processes per annum that should be served by one peon in the several stations of each district on the assumption that each peon spends at least 20 days per

mensem in the mufassil on the service of processes. Table IA gives the corresponding minimum district average number of processes that should be so served. The number of permanent process-servers for each district of West Bengal, will be fixed by the High Court from time to time with the approval of Government [*vide* rule 885 (i)].

TABLE I.

*Bankura.*

Sadar	... 750
Bishnupur	... 750
Khatra	... 800

*Birbhum.*

Sadar	... 700
Bolpur	... 750
Dubrajpur	... 750
Rampurhat	... 800

*Burdwan.*

Sadar	... 700
Asansol	... 750
Kalna	... 900
Katwa	... 900

*Cooch Behar.*

Cooch Behar (Sadar)	... 700
Dinhata	.. 700
Mathabhanga	.. 700
Tufanganj	... 700
- Mekliganj	... 650

*Hooghly.*

Sadar	... 700
Serampore	... 800
Arambagh	... 650

*Howrah*

Sadar	... 800
Uluberia	... 750
Amta	... 800

*Midnapore.*

Sadar	...	800
Contai	...	800
Danton	...	850
Garbeta	...	900
Ghatal	...	750
Jhargram	...	850
Tamluk	...	800

*Murshidabad.*

Sadar	...	700
Jangipur	...	800
Kandi	...	750
Lalbagh	..	800

*Nadia.*

Krishnagar	..	800
Ranaghat	...	850

*24-Parganas.*

Alipore	...	750
Baraset	...	750
Baruipur	...	750
Basirhat	...	750
Diamond Harbour	...	750
Sealdah—		
Small Cause Court	...	600
Munsifi	..	750
Bongaon	...	800

*West Dinajpur.*

Balurghat	...	900
Raiganj	...	900

*Darjeeling.*

Darjeeling (throughout the district)	..	450
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*Jalpaiguri.*

Jalpaiguri	...	850
Alipur Duars	...	450

*Malda.*

Sadar	..	850
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TABLE I A.

TABLE IA,

Name of the district	i.e., average to the nearest 5.
Burdwan	... 775
Birbhum	... 755
Bankura	.. 760
Midnapore	... 815
Hooghly	... 750
24-Parganas	... 755
Nadia	... 855
Murshidabad	... 760

NOTE 1.—For the purpose of the rule all copies of a process of the same description in one and the same case (whether it be a summons, warrant, notice, etc.) served in one village or town by a process-server at one and the same visit, shall be reckoned as one original process; while copies served in the same village or town on separate visits, or in different villages or towns, shall be reckoned as so many original processes as the number of different villages or towns on separate visits to the same village or town. Thus where five copies of a process in one and the same case are served on five different persons in the same village in one visit by a process-server, this will be reckoned as a service of one original process; while where they are served in the same village on five separate visits, or in five different villages, this will be reckoned as a service of five original processes.

NOTE 2.—Three processes will be counted for each emergent process.

NOTE 3.—Each day on which a peon is occupied in keeping custody of attached movable property, standing crops or of a person under arrest, in attending on commissioners deputed to deliver possession or in taking records, letters, etc., from one station to another, should be reckoned as service of three original processes.

**896.** (1) The District Judge will temporarily increase or decrease the actual strength of process-servers in his district if such increase or decrease is warranted on a calculation of the total permissible strength to be obtained by dividing the total of the number of original processes of all Courts issued to the process-servers for service in the district in the preceding calendar year by the district average number of processes per process-server shown in Table IA of rule 895. Any fraction will count as one.

(2) The average number of days per month spent by the process-servers in the mufassal on the work of process-serving shall also be calculated. This shall be calculated by ascertaining the total number of days spent in the mufassal on process-serving during the calendar year previous to the date of calculation by all the process-servers of the district (including probationers while doing the work of process-servers on leave), and dividing the number by the total number of process-servers (including temporary men, but excluding probationers) actually employed in the district during the same period, and then dividing again by 12.

(3) The calculations described above should be made by District Judge each year in January. An increase in the actual strength of process-servers if justifiable under the above calculations, shall be effected by filling any permanent posts vacant, and when the full sanctioned strength of permanent men is already employed by the creation of temporary posts in the scale of pay of the permanent posts. A decrease shall be effected, if warranted by the calculations, by abolishing any temporary posts of process-server, and if there are no such posts, by leaving unfilled

vacancies in permanent posts as they occur. Such increase or decrease, as the case may be, will take effect from the beginning of the next financial year.

(4) A yearly report of the calculations thus made shall be sent to the High Court and to Government, so that it may be seen whether the peon personnel represents the actual requirement based on the standards laid down in rule 895.

(5) If sufficient cause appears for altering the district average shown in Table IA of rule 895, the District Judge may report the matter to the High Court which will issue orders subject to the approval of Government.

(6) The District Judge may apportion the process-servers of the district among different stations as may appear necessary, the figures in Table I being used as a guide for this purpose.

(7) It should be remembered that if the minimum standard is in fact too high, this will appear from the inability of the staff allotted on that basis, to cope with the work. On the other hand, if the standard is too low the fact will not emerge so easily; if the staff work with full efficiency, the lowness of standard will appear from the fact that they were not employed on the average 20 days in the mufassal, and whenever the calculations for any station appear to justify the full staff but the average number of days spent in the mufassal is less than 20, this will show that the minimum standard for that station has been pitched too low. But it is likely that the staff will accommodate itself by slackness to the lower standard. Before submitting any proposals for lowering the minimum in any station District Judges should satisfy themselves that the staff in that station is working efficiently, and further that relief cannot be given from other stations where the minimum standard may be too low.

**897.** In order to ensure that processes are fairly distributed among process-servers and that a fair average of successful work is attained by each process-server, a statement in Form No. (R) 18 shall be prepared by the nazir and placed before the Judge in charge of the mazarat at the close of each month for scrutiny. A copy of the statement with the remarks of the Judge in charge and the disciplinary action taken in the case of offending peons shall then be forwarded to the District Judge who will compare the work done by each process-server in the several Courts in his jurisdiction and see whether the rules regarding distribution and service of processes are being strictly observed, and whether proper disciplinary action has been taken against delinquent process-servers.

**898.** Every nazir shall, at the end of each month, place before the Judge in charge a statement of the number of processes, calculated as in rule 895 and the Notes thereto which may have been executed by the process-servers within the month; and such statement shall show the number declared by each Court as emergent. A copy of the statement shall also be sent to the District Judge.

In West Bengal, provisions relating to discipline and appeal are contained in Rule 17 of the Bengal Civil Court's Clerical and Inferior Services (Recruitment, Discipline and Appeal) Rules, 1941, and the authority empowered to impose penalties and the penalties which he may impose, and the appellate authority, are shown in the schedule to the said rules.

## 2. Ministerial Officers.

**900.** (1) A service book in the prescribed form should be maintained for every non-gazetted Government servant holding a substantive post on a permanent establishment in accordance with the rules framed by the Provincial Governments in this behalf.

(2) The leave account maintained for every non-gazetted Government servant should be revised annually and kept up-to-date.

**901.** (1) Every additional Judge, or Subordinate Judge or Munsif (including an Additional Subordinate Judge or an Additional Munsif) is required to send to the District Judge annually by 15th April, a confidential character report relating to Financial year in Bengal Form No. 290-B as amended, on the work, character and official merits of each of the ministerial officers employed in his office and in the departments placed in his charge.

(2) The District Judge should similarly draw up in the Bengal Form No. 290-B as amended a confidential character report on the work, character and official merit of each of the ministerial officers employed in his own office.

**902.** (1) A ministerial officer (whether continuously or not) who has completed three years as District Judge's Sheristadar or as nazir at district headquarters or in both those posts in succession and who was previous thereto holding any other post or posts at the sadar station for two years or more, becomes liable for transfer, if the High Court consider it desirable.

(2) The High Court reserves to itself the right to transfer any such ministerial officer at any time, before the completion of the tenure of office laid down in sub-rule (1) of this rule, whenever a review of the case of any such officer shows that in the interests of the service his transfer is desirable before the prescribed period.

**903.** (1) The District Judge should from time to time consider the question of transferring the ministerial officers of one station to another station in the district whenever they have been in the same station or in the same post for more than five years continuously.

(2) If it is found desirable to transfer a ministerial officer from a station but there is no corresponding post of the same grade in any other station within the district, the matter should be reported to the High Court, so that his transfer to another district may be arranged.

**904.** After holding a responsible position and dealing with accounts and money for not more than five years, a ministerial officer must be transferred to another appointment in the same or another office or department. This rule applies to nazirs, accountants and cashiers of all Courts as well as to Sheristadars and mohurrirs of Munsif's Court when they are employed in keeping accounts, there being no separate accountant.

**NOTE 1.**—The taking of leave for a period of not less than six months at a time after holding such post for five years continuously may be deemed as interruption provided an independent officer acts in the post and the presiding Judge is satisfied that no exception could be taken to the conduct of the officer on leave during the term he held the office. Reappointment to the same post should however be avoided as far as possible.

**NOTE 2.**—The transfer under the rule may be to a post under another Court in the same or a different station, or to a post under the same Court unconnected with the keeping of accounts or cash.

**NOTE 3.**—This rule does not generally apply to assistant accountants or naib-nasir, who only assist the accountant or cashier, but such officers are liable to be transferred under rule 903.

(1) The West Bengal Board's Miscellaneous Rules, 1955 relating to securities, rules 127, 139, 142, 145 and 149 in particular, shall be followed *mutatis mutandis* in the case of ministerial officers of Civil Courts who are required to furnish securities and the process-servers attached to the Courts.

NOTE 1.—Accountants, Record-keepers and Assistant Record-keepers are required to furnish the security prescribed by rule 139 of the West Bengal Board's Miscellaneous Rules, 1955.

NOTE 2.—In cases where a clerk is required to officiate as Nazir for a period of three months or less, attention should be paid to the two provisos to Rule 142 of the West Bengal Board's Miscellaneous Rules which regulate the furnishing of securities in such cases. There is, however, no objection to the procedure indicated in Note 4 to Rule 22 of the West Bengal Financial Rules, Vol. I, being followed in the case of officiating periods of three months or less. When the officiating period exceeds three months, the clerk officiating as Nazir should either furnish the full amount of the security or the permanent Nazir should stand surety for him to the extent of his own security.

NOTE 3.—One process-serving peon cannot stand security for another peon.

(2) Whenever it is found that the amount in the hands of an officer handling money is frequently in excess of the amount of his security, steps should be taken to ensure that his security is promptly raised to the proper figure.

NOTE.—The power to reduce the security in exceptional cases is vested in the local Government alone and the District Judge has not been empowered to exercise the function.



## CHAPTER 45

### LIBRARIES.

**906.** In each office an official, to be nominated by the presiding Judge in writing, shall be placed in charge of the library. He will be primarily responsible for the custody and preservation of the books therein; but this will not relieve the presiding Judge from the general responsibility devolving on him as the head of the office.

It shall be the duty of the librarian—

- (1) to stamp the seal of the Court on the title page and several leaves of each book;
- (2) to affix on the lower portion of the back of every book received a label with a number corresponding to a number in the catalogue;
- (3) to keep a classified and indexed catalogue of all books in the prescribed form and to prepare a new catalogue every five years;
- (4) to check the catalogue with the books at the commencement of each year and to submit a report to the presiding Judge;
- (5) to issue books from the library in accordance with rule 909 and to see that no books are issued otherwise.

**907.** Books shall be classified in the catalogue and arranged in the library in the manner following:—

- (i) Regulations and Acts.
- (ii) Special Acts (when printed separately).
- (iii) Commentaries on Acts, Text books or General treaties.
- (iv) Law Digests and Index of Cases.
- (v) Departmental Codes, Guides, Manuals and Circulars.
- (vi) Law Reports (all kinds).
- (vii) Periodicals.
- (viii) Administration Reports (India, Bengal, other Provinces, Miscellaneous departments).
- (ix) Dictionaries, Glossaries, Lists, Directories.
- (x) Miscellaneous.

**NOTE.**—Where the library is small, classification should be according to subject and the books arranged in the shelves accordingly.

**908.** (1) Correct catalogues of stout paper must be kept of the books in the library in the following form in manuscript. The binding of a catalogue should be limp, unless its size is such as requires stronger



**912.** Every ministerial officer upon receiving charge of an office to which a library is attached, is to satisfy himself that the books are complete and in good condition, and that the catalogue and lists are duly kept up-to-date. Unless he then reports deficiencies, it will be assumed that he received the library in good order, and he will be thenceforward personally responsible for defects.

**913.** The officer in charge of the library should occasionally inspect the almirahs to see that the books are not destroyed by white ants or lost.

**914.** The Judge in charge of the library shall personally make, at least once a year, a physical verification of the stock of books in the library. If he needs a ministerial officer to help him in this verification, one such officer, other than the librarian, should be deputed by the District Judge or the presiding officer, as the case may be. After each annual inspection, which must include an annual verification of the stock, the Judge in charge should enter in the stock book or catalogue a certificate that he has verified the stock and found it to agree with the catalogue or if there be shortage, the details should also be entered and reported to the High Court.

**915.** Presiding Judges should from time to time inspect the books and weed out duplicate copies of superseded editions and books which are of no further use. They may be sold to the best advantage.

**916.** In outlying stations, the copy of the "Calcutta Gazette" received by the senior judicial officer should be circulated by his Sheristadar to the other judicial officers with a slip attached.

**917.** Reports, gazettes, and other books supplied to judicial or other officers are not to be taken away by the incumbents on their promotion or transfer, but are to be transferred to their successor in office.

## CHAPTER 46

### FORMS, STATIONERY, FURNITURE AND STORES.

918. At every station, the Judge in charge of forms will place a clerk in charge of the stock of forms required for all the Courts at that station.

919. The forms shall be arranged on the racks by groups in accordance with the classification given in Volume II and the name of each form with schedule and serial number shall be shown against it. A board indicating the name of each form shall be exhibited against the rack.

Page 303, Rule 920—

Cancel the rule and substitute therefor the following:—

"920. (1) When taking delivery of consignments of forms the weight of the packages shall be carefully checked with that shown on the railway receipt or bill of lading and any discrepancy in the weight should be noted. The packages should then be opened and the contents checked with the packing account enclosed in each consignment. Special care should be taken in the receipt of saleable forms. The packages containing them should invariably be opened, immediately on their arrival, and the forms counted, in the presence of the Judge-in-charge of forms. Any discrepancies in receipts, either of saleable or non-saleable forms, should be reported within seven days to the Press and Forms Manager, West Bengal.

(2) A stock book of forms shall be correctly maintained by the Forms Clerk in the prescribed register in Form No. (R) 39(i) in which the entire stock of forms, so received by him, shall be entered. A separate page or a sufficient number of pages should be given to each form, so that under each item the transactions of several years may be recorded continuously.

(3) Duplicate carbon receipt books in Form No. (A) 31, and all saleable forms, shall be made over, in their entirety, the former to the Accountant, and the latter to the Nazir, after obtaining receipts from them in the stock book in (R) 39(i) maintained by the Forms Clerk.

(4) The Accountant shall then enter the stock of receipt books in Form No. (A) 31 in a separate register in Form No. (R) 39(i) to be maintained by him and keep them under lock and key. Issues of such books to the Nazir must also be entered in this register. The Nazir shall similarly enter the stock of saleable forms in a separate register in Form No. (R) 39(i) A, and maintain a proper account of such forms in that register.

for two years. The Judge in charge. The requisition slips should be retained at an hour to be

925. Whenever there is a change of the forms clerk, a balance shall be struck by the outgoing officer and the officer receiving charge shall verify the balance by counting the forms on the racks. Unless he then

reports deficiencies, it will be assumed that he received the stock shown and he will be thenceforward personally responsible for shortage or defects.

**926.** The allotment for purchase of stationery should be divided between the Courts in a district according to their respective requirements and stationery articles of the value representing the allotments should be supplied separately to each Court for its consumption.

**927.** An officer nominated by the presiding Judge shall be in charge of the stationery and maintain a stock book in Form No. (R) 39-A, showing accounts of receipts and issues. The recipient and issuer of stationery articles will put their respective initials in the columns provided for the purpose at the time of the receipt and issue of stationery. At the same time the issuer will cancel the blank columns. The opening and closing balances will be struck monthly by the clerk in charge of the stationery articles. The presiding Judge will cause the stock of stationery to be verified half-yearly by an officer who will report the result and make a note of the verification in the stock book. The presiding Judge will initial after satisfying himself about the correctness.

**928.** A stock book shall be maintained by the Nazir in the prescribed form No. (R) 40 of all articles of office furniture and stores. All new purchases, issues and sales, etc., of old stock must be entered in it as they occur. A verification of the stock should be made at least once a year by a responsible officer other than the Nazir under the supervision of a gazetted officer. A note of the verification should be made in the stock book and all discrepancies noticed should be brought to account immediately.

## CHAPTER 47

### OFFICE RULES AND ADMINISTRATIVE WORK.

#### 1. Office and Routine.

**929.** No one not being a member of the office establishment will be permitted to enter any office room without the special permission of the presiding Judge.

**NOTE.**—See rule 408.

**930.** (1)(a) The Sheristadar of every Court will be held responsible for the due and prompt performance of all duties connected with the management and supervision of the office and the departments attached to the Court. He is responsible for the condition of the office, the records kept there and the work done by the staff employed.

(b) It is his duty to insist on the regular and efficient discharge of all kinds of business for which any and every member of the establishment is responsible, to exercise proper personal control and supervision over them, to make himself thoroughly acquainted with each man's work and check it frequently, to give proper instructions regarding the maintenance of registers, etc., and the performance of other duties and to see that the Rules and Orders of the High Court are strictly carried out.

(c) He should inspect from time to time the work of each member of the staff and submit periodical reports to the presiding Judge regarding the condition of the office and the work of the other ministerial officers. At the first sign of arrears in the work of any officer, or of such a pressure of work as is likely to cause arrears the matter must be reported at once to the presiding Judge and all cases of unreasonable delay in the disposal of business, misconduct and neglect or improper discharge of duty should be promptly brought to his notice. Whenever a ministerial officer of the establishment is about to go on leave or transfer, the Sheristadar should report to the presiding Judge arrears in his work, if any.

(2) A pending list should be kept in every judicial office by the Sheristadar in the prescribed form No. (R) 38-A, Vol. II, for inspection by the presiding Judge with a view to check arrears or delay in the disposal of business. In submitting the pending list for the inspection of the presiding Judge, the register of letters received should also be put up for inspection at the same time.

**NOTE 1.**—This register shall be laid before the presiding Judge for his examination at least once a week, and the fact of such examinations having been made together with such instructions or remarks as may appear, necessary shall be entered by him.

**NOTE 2.**—All arrears of work in the office at the end of the preceding week regarding entries in the various registers, noting of result of suits and execution cases, writing of table of contents, drawing up of decrees, return of documents, periodical despatch of records, preparation and delivery of payment orders, succession certificates, probates or letters of administration, sale certificates, copies, information, etc., should also be briefly noted in columns 1 and 2 of this register.

**931.** At the entrance of each office room occupied by clerks or copyists a wicket gate shall be placed with a spring which no outsider shall be allowed to pass. Inside each office is to be kept a list showing who are the officers entitled to occupy the room. Outside the entrance to the room should be hung in a conspicuous place a board having printed on it both in English and vernacular "No admittance for the public". The

presiding Judge of the Court should visit at unstated times during office hours the room occupied by its subordinates and call the roll; and in the event of his finding any outsiders within the room, the ministerial head of the department should be punished, since he is to be held responsible that the public do not enter the room.

(2) All transactions between the public including pleaders' clerks and the office shall be over the wicket gate as far as practicable and no one will have access to any member of the establishment except to the Sheristadar and such officers as the presiding Judge may in his discretion direct.

(3) The judicial officers will see that as far as practicable these officers sit near doors or windows to be accessible to the public. Where this is not practicable, persons may be allowed to come up to their tables for the transaction of any business, but no one shall be permitted to handle or touch any papers unless it be for the purpose of obtaining his signature.

**932.** (1) In order that it may be proved who was directly responsible for the entries in a particular register or record, each clerk shall keep a duty card showing the particulars given in the following form:—

Name of Clerk

Department.

Nature of work.			Remarks.
Authorised registers	Unauthorised registers.	Miscellaneous duties.	
1	2	3	

(2) This card is to be signed by the Sheristadar and the clerk concerned, and a duplicate of the same, similarly signed, is to be kept by the ministerial head of the department to which the clerk belongs. Such ministerial head of the department will be responsible for having all changes in the nature of the work of each officer under him duly entered on the cards affected. The card will show the dates on which each successive clerk assumed and relinquished charge of his office and also the date of the last distribution of work.

**933.** The employment of outsiders by the ministerial officers for helping them in their work or getting office papers written is strictly forbidden. Judicial officers should keep a strict watch on this objectionable practice and any subordinate officer found violating the rule should be severely punished.

## 2. Correspondence.

**934.** (1) Correspondence between judicial officers of all grades and between these and officers of departments of Government of whatever status shall be by letter or memorandum, but the memorandum or the endorsement form should be used whenever it can conveniently be adopted.

(2) When a letter from either a subordinate to a higher authority, or *vice versa*, contains nothing but a piece of information for the future guidance of such authority, or a piece of information sought for to complete any proceedings, or to rectify any error, or a direct affirmative or direct negative, to any question put, it will be quite sufficient if the letter be endorsed or passed on with the signature of each successive authority. When correspondence relates to the transmission of returns, documents, etc. or other routine matters, memoranda or endorsements should be substituted as much as possible for covering letters. Such memoranda and endorsements should be numbered and dated.

**935.** The use of *facsimile* stamp in official correspondence even in matters of routine may provide ample opportunities for fraud. All correspondence shall be signed by the forwarding officer and should it not be possible for him to sign all letters, they should be signed for him by some responsible and trusted official.

**936.** Judicial officers when signing papers of all sorts are required to take particular care that their official signature is always so distinctly and readily legible that there may never be any room to doubt thereafter that it is genuine and authentic.

**937.** Where a regular postal service exists between one place and another not being in the same station or headquarters, all official letters or postcards passing between those two places should ordinarily be sent by post, whether it be cheaper to send them by hand or not. They may, however, be sent by hand if owing to the nature of their contents or to their urgency, it is necessary in the public interest to send them in that manner. Letters from the District Court to the subordinate Courts should be sent in separate covers addressed to each Court as it is an improper use of postal facilities to post letters for several addressees in one envelope. Articles not being letters or postcards, *e.g.*, newspapers, printed circulars and records may be sent by means other than the post office, *e.g.*, by railway or through messengers.

**938.** (1) When confidential covers are sent out of an office, they should be placed in double covers, the inner cover being sealed, marked "Confidential" and superscribed with the name only of the officer for whom they are intended, the outer cover being addressed by his official designation only and without the addition of his name.

(2) When the official trusted with the opening of letters finds inside the cover another envelope marked "Confidential" and addressed by name to the head of the office, he should be careful not to open it, even if the head of the office is away on tour or for any other purpose. The addressee should invariably open the inner cover himself and allow no subordinate to open it.

**939.** (1) In the Courts of Subordinate Judges and Munsifs it will ordinarily be sufficient to have two correspondence files—one for letters received and another for draft of letters issued during each year. The papers should be arranged in chronological order: the first letter received or issued being at the bottom of the file, and the last letter issued or received being at the top. Each letter issued will have assigned to it a consecutive number called the serial number.



(2) Many letters received in or issuing from Courts are of every transient interest, or are such that correspondence begins and ends with the one letter and its reply. A "Miscellaneous collection" should be opened within which all such letters may be placed chronologically without reference to subjects.

(3) Correspondence should ordinarily be preserved for three years. From correspondence three years old, the more important papers should be sorted out for preservation and the rest destroyed. The Miscellaneous collection should be destroyed after one year. Office copies of monthly and quarterly statements should be destroyed after three years and Annual statements after six years. "Calcutta Gazettes" should be sold after six years.

(4) Local newspapers, pamphlets and publications of other departments of Government, acknowledgments, reminders and other papers for which there is no further use shall be destroyed at such intervals as the presiding Judge may direct.

**940.** There should be separate files for (i) (a) General and Special Letters and (b) Rules and Circular Orders, issued by the High Court, (ii) circulars or Notifications of the Central and the State Governments, and (iii) Circulars of the Accountant-General, West Bengal, arranged chronologically with date stamp of receipt and page mark. To all these files, in the office of the District Judge, and to the files of General and Special Letters of the High Court in the offices of the other Judicial Officers, shall be prefixed an index, in alphabetical order, in which the subject of each letter shall be entered at the time it is filed. When collections of such General and Special Letters of the High Court and the circulars of Government and the Accountant-General, West Bengal, which under rule 481 are to be preserved for ever, run into the thickness of a reasonably sized volume, they should be bound.

**941.** All amendments relating to the Civil Rules and Orders. Volumes I and II, should be promptly noted and all correction slips pasted in their proper places as they are received. The volumes should always be kept up-to-date and the index to addenda and corrigenda slips regularly written up.

### **3. Administrative work, Office management and Supervision.**

**942.** The administrative work connected with the Civil Courts will be carried on in the office which will be divided into departments and each such department will be in charge of a judicial officer who shall be responsible for its efficient working and exercise control over the ministerial officers employed therein.

**943.** (1) The District Judge shall place each of the common departments like accounts, nazarat, copying, etc., in the immediate charge of a separate judicial officer. Such officers need not ordinarily be Subordinate Judges at the district headquarters or the senior Munsifs at outstations. It is desirable that Subordinate Judges who are engaged in more important work should not have their time for judicial work curtailed by such a charge. The selection, whether at the district headquarters or at outlying stations, is to be made by the District Judge from among the younger and more energetic and enterprising Munsifs who take an active interest in administrative work and rules of procedure.

**NOTE.**—The judicial officer in charge of the accounts should also hold charge of the nazarat accounts.

(2) The district record room shall similarly be placed in charge of a judicial officer.

944. The District Judge's English Office, should be also placed in charge of one of the several judicial officers posted at the headquarters. Appointment, promotion, leave and transfer of the establishment, supervision over the establishment—clerical as well menial—disposing of correspondence and necessary business of an ordinary nature, e.g., office routine which can be disposed of according to the traditions and rules of office, countersigning payment orders, etc., and such other functions as the District Judge considers suitable may be entrusted to such officer. All reports, applications and other matters relating to these functions shall be laid before the judicial officer in charge of the English Office for disposal under the direction and guidance of the District Judge.

### No. 72.

Page 309, Rule 945(1)—

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Delete "ante" in line 2 of the rule.

[No. 72, dated the 27th November, 1963. File No. 4R—25 of 1962.]

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ices shall be recorded in a note-book kept for the purpose.

946. The Judge in charge of the copying department should as often as time permits inspect the register kept by the head comparing clerk with reference to some of the application forms recorded therein with a view to ascertain whether the rules in Part IV are being strictly observed.

NOTE.—The following are some of the items which should be looked into:—That entries in the register of application for copies are made contemporaneously with the several stages through which an application for copy passes, that copies are made within the prescribed time, that undue preference is not given to applicants of later dates, that proper endorsements are made by the clerks through whose hands the application passes, that originals are sent to the copying department without undue delay and are returned soon after copies are made, that folios are estimated as nearly as possible to actual requirement, that unused folios and stamps are actually returned, that no folio contains more or less than the required number of words, that folio heads are not torn off and billed for until copies are ready for delivery, that proper ink or ribbon is used, that copies are free from error, that surreptitious copies are not being issued, etc.

947. The Judge in charge should pay occasional visits to the District Record Room and personally satisfy himself that the rules laid down for the working of it are being strictly followed. Any case of serious omission or irregularity should be promptly brought to the notice of the District Judge.

NOTE.—The following are some of the things which should be watched periodically:—That records are being sent by Courts within the time prescribed, that records are carefully examined and defects and deficiencies are reported as soon as possible after examination, that they are arranged neatly in their proper places in the racks with an index sheet for each rack duly written, that a progress report is submitted every fortnight, that the index to the index register is properly maintained, that requisitions for records are promptly attended to and not returned on frivolous grounds, that removal slips are attached in every case of removal, that reminders are regularly sent for records not returned within a reasonable time, that exhibited documents not taken back are destroyed on the expiry of the prescribed period after service of the required notice, that records due for destruction are sorted out and destroyed every quarter and entries to that effect are made in the bound lists and index boards, that no papers are allowed to be piled or scattered on the floor, that inspection of records is allowed under proper safeguards, that outsiders are not allowed in the record room, that fire extinguishers are in working order, that the plan and index of the record room is up-to-date, that the racks are dusted and sprayed with disinfectants from time to time, etc.

## CHAPTER 48

### MISCELLANEOUS INSTRUCTIONS.

#### 1. General.

**948.** (1) All communications intended for the High Court in its Original Jurisdiction should be addressed to the Registrar, High Court, Original Side, Calcutta-1. Similarly all communications intended for the High Court in its Appellate Jurisdiction should be addressed to the Registrar, High Court, Appellate Side, Calcutta-1., unless they deal with judicial matters in which case—

(i) Communications relating to criminal matters and First and Second Appeals should be addressed to the Second Assistant Registrar, High Court, Appellate Side, Calcutta-1.

(ii) Communications relating to Misc. Appeals, Civil Rules and Civil Revision should be addressed to the Third Assistant Registrar, High Court, Appellate Side, Calcutta-1.

(2) On covers enclosing communications relating to judicial matters (Civil and Criminal), the number and year of appeal to which a particular communication relates should, wherever possible, be noted.

(3) The despatch number of a communication should be noted in the space provided for it on the cover and if it is accompanied by enclosures, the number of such enclosures should be added after the despatch number, on the cover.

(4) For telegrams intended for the High Court, the address "High Court" with the addition of the words, "Original" or "Appellate", as the case may be, and "Calcutta" will be sufficient.

**949.** The pages and paragraphs of annual, administration and other reports and similar lengthy communications submitted to the High Court should invariably be numbered.

**950.** A District Judge is not entitled to issue general directions in the form of rules or circular orders to the judicial officers subordinate to him. If there be any matter connected with the judicial administration or procedure, which in his opinion requires the issue of a general rule or order for the information and guidance of the Courts over which he exercises control, he should always submit a memorandum on the subject, together with a draft rule or order for the confirmation and approval of the High Court, without which it should in no case be issued.

**NOTE.**—This rule is not to be evaded or defeated by the issue of such orders under the guise of "Standing Orders."

**951.** Whenever there is any doubt or difficulty in interpreting a rule or circular order or any instruction of the High Court, or when any matter of importance not provided for in the rules has to be determined, a reference should be made to the High Court with a memorandum on the subject and a statement of the points which require elucidation. Such reference when made by subordinate judicial officers should ordinarily be sent through the District Judge who shall forward the same to the High Court with his remarks thereon. The High Court in its

administrative capacity however has always declined to express its opinion on matters fit for judicial determination. Order 46, rule 1, Civil Procedure Code, is the proper medium for the latter type of case when the subject is suitable.

**952.** When there are more than one Court of the same class, the Judicial Officers presiding over them should not be designated according to their seniority but as follows, viz., Subordinate Judges or Munsifs, 1st Court, 2nd Court, 3rd Court, etc., or where there are additional courts, as "Subordinate Judge or Munsif, 1st Additional Court, 2nd Additional Court etc."

**953.** Circular Orders issued by the High Court are intended to apply to the Court of Small Causes at Sealdah, all communications from which to the High Court should be submitted through the District Judge, 24-Parganas, to whom the said Court of Small Causes at Sealdah is subordinate (vide Sec. 3, C.P. Code). In dealing with budget estimates or contingent bills of the Court, the District Judge will be guided by the general rules applicable in the case of the other subordinate Civil Courts.

**954.** (1) Whenever there is assumption or relinquishment of charge by any Subordinate Judge or Munsif in any judgeship for any reason, this fact as well as the date and hour should be promptly reported by the District Judge to the High Court.

(2) When a District Judge or an Additional District Judge assumes or relinquishes charge of an office, he should promptly report the fact together with the date and hour of the event, to the Accountant-General, the High Court and the Chief Secretary to the State Government.

(3) When a District Judge or an Additional District Judge proceeds on circuit duty the fact should be reported to the High Court in Form No. (M)13, Volume II.

**955.** (1) All applications for the grant of vacation leave to officers of the West Bengal Civil Service (Judicial) should be submitted to and sanctioned by the District Judge, provided that the orders of the High Court are obtained in respect of officiating Subordinate Judges and in respect of other officers whom the District Judge may wish to detain during the vacation in the interests of the public service.

(2) Before granting an application for vacation leave, the District Judge should satisfy himself that it can be granted without injury to the public service or additional expense to the State; and where an officer has failed to rejoin his appointment in time to sit on the day the Courts re-open after the vacation, he should be reported to the Accountant-General, as absent without leave, and his absence brought to the notice of the High Court.

(3) The District Judge is also authorised to grant leave to judicial officers to remain away from their station during authorised holidays other than the Civil Court vacation unless their absence is likely to endanger the public service. Judicial officers should invariably ask for the necessary permission and wait for the reply and should not except for very emergent reasons leave their stations without the previously obtained permission of the District Judge.

**956.** Subordinate Judges and Munsifs shall not apply for transfer before it is due except in special circumstances. Any such application rendered necessary by special circumstances, should be forwarded officially through the District Judge, who should, in forwarding it, state his own opinion on the grounds on which the request for transfer is based.

**NOTE.**—Transfers of officers at their own request are not treated as transfers for the public convenience and therefore no travelling allowance is ordinarily admissible in such cases (Rule 99 of the West Bengal Service Rules, Part II).

**957.** No gazetted officer of the judicial service shall be permitted to reside elsewhere than at the headquarters of the station to which he is for the time being posted, except with special sanction. In forwarding an application to the High Court, the District Judge should state whether in his opinion the grounds on which exemption from the rule is based are well founded.

**NOTE.**—Presiding Judges may in special circumstances grant permission to a ministerial officer to reside elsewhere than at the headquarters of the station, provided that the work which he has to do, does not in any way suffer. In granting permission regard should be had to the nature of his duties and the department in which the ministerial officer is serving.

**958.** Judges of all grades should avoid, as far as possible, becoming the guests of or entertaining those private individuals or Government servants who are or may be interested in civil or criminal cases or in matters, which may eventually come before them for decision.

**959.** Judicial officers shall not attend public cinema shows and other places of amusement without payment, except when invited by a personal friend or a relation who pays or invited to officiate on ceremonial occasions.

**960.** No judicial officer shall be allowed to practise as a pleader or advocate during the term of any leave that he may obtain from the High Court.

**961.** Judicial officers should not mix themselves up in local affairs politically or otherwise.

**962.** A police officer in uniform on entering a Court shall salute the presiding officer with his head dress on, in the approved manner. He will remove his head dress (provided it is a head dress other than a *pagri*) while giving evidence and replace it before saluting the Court on retiring [Rule framed by the Inspector-General of Police under section 12 of the Police Act, 1881 and on approval by the High Court inserted in the Police Regulations, Bengal, Volume I, as rule 728 (XXI)].

**963.** Military officers and soldiers while appearing before Civil Courts (other than Courts established under the military law) shall wear the following dress:—

(1) An officer or soldier required to attend a Court in his official capacity should appear in uniform, with sword or side-arms. Attendance in an official capacity includes attendance—

(a) as a witness when evidence has to be given of matters which came under the cognizance of the officer or soldier in his military capacity;

(b) by an officer for the purpose of watching a case on behalf of a soldier or soldiers under his command.

(2) An officer or soldier required to attend a Court otherwise than in his official capacity may appear either in plain clothes or uniform.

(3) An officer or soldier shall not wear his sword or side-arms if he appears in the character of an accused person or under military arrest, or if the presiding Judge of the Court thinks it necessary to require the surrender of his arms in which case a statement of the reasons for making the order shall be recorded by the presiding Judge, and, if the military authorities so request, forwarded for the information of His Excellency the Commander-in-Chief.

(4) Fire-arms shall under no circumstances be taken into Court.

(Rules framed by the Government of India).

## 2. Construction and repair of buildings for judicial officers.

964. (1) District Judges in West Bengal are empowered to give administrative sanction to projects for the repair and construction of Court or office buildings under their control, the cost of which does not exceed Rs. 2,500. Projects estimated to cost more than this sum must be submitted, with plans and estimates, for sanction to the State Government through the High Court.

(2) All projects affecting the repair or construction of residential buildings require the sanction of the State Government, and, if their cost exceeds Rs. 1,000 they must be submitted for such sanction through the High Court. Projects estimated to cost less than Rs. 1,000 should be submitted to the State Government direct.

(3) Every proposal for building project, whether submitted to Government direct or through the High Court or sanctioned by the District Judges under the authority vested in them, shall conform to the instructions issued by the State Government from time to time in this regard. Such proposals, as are required to be submitted to Government direct or through the High Court, shall, besides satisfying the requirements of the aforesaid instructions, explain clearly the degree of urgency which attaches to each proposal in relation to any pending building project concerning the judgeship of the District Judge making the proposal.

## 3. Dress of judicial officers.

965. When presiding on the Bench all judicial officers (including Barristers-at-Law) whatever their rank shall wear the following dress:—

- (i) a King's Counsel's gown of any black material other than silk;
- (ii) stand up, winged white collar and bands;
- (iii) a black coat of any pattern or black *chapkan* or *achkan*; and
- (iv) if the coat is left unbuttoned, a black waist-coat.

NOTE 1.—Sessions (including Assistant Sessions) Judges and Judges of the Calcutta Small Cause Court (including the Registrar), shall also wear the above dress.

NOTE 2.—The wearing of the full robes is compulsory for all judicial officers and no deviation of the rule will be allowed, except in special circumstances to be submitted to the High Court for its orders.

NOTE 3.—The District Judge should at the time of inspection or on other occasions ascertain whether judicial officers sit daily correctly robed.

NOTE 4.—The rule does not apply to executive officers invested with the powers of a civil judge.

## 4. Temporary additions to the judicial staff and transfer of cases.

966. (1) Applications for temporary additions to the staff of judicial officers of a district should be made to the High Court and accompanied by statements in the prescribed form No. (M)54, Volume II. Both the application and the statements accompanying it should be submitted in duplicate. Such applications should state the causes which have brought about the necessity for assistance, whether such causes were beyond the control of the officers concerned, whether the existing officers are in the opinion of the District Judge working to their full capacity and the period for which such assistance is necessary.

(2) Applications for the retention of temporary posts beyond the sanctioned term should be made to the High Court not less than six weeks before the expiry of the term of the post, accompanied by the statements in the prescribed form No. (M)34. Such applications should conform as far as possible, to the requirements of clause (1). A copy of the application together with a copy of the statements should be simultaneously sent to Government direct and the fact that this has been done should invariably be mentioned in the said application to the High Court.

(3) The statements accompanying an application for assistance should show the work done by each officer individually, of the superior staff at headquarters or of the Munsifi, as the case may be, during the two years preceding the year in which the application is made, and for each completed quarter of the latter year. Details of files pending at the time of making the application should also be furnished.

**NOTE.**—Instructions for preparation of the statements are contained in G. L. No. 24 of 1932 as modified by G. L. No. 5 of 1933.

**967.** (1) In order to equalise, as far as possible, the work of permanent and temporary additional Courts, selection of cases for transfer to the files of temporary additional Courts should be made on the following principles:—

(a) When additional officers appointed temporarily are comparatively junior and inexperienced, the simpler suits only should be transferred to them for trial.

(b) Pending cases (including appeals) in a Court or Courts which receive relief should be classified as (i) cases over one year old, (ii) cases between six months and one year, and (iii) cases under six months, and be listed separately in the order of their institution; of the total number selected for transfer an equal proportion of each class of case should be transferred to the temporary Courts. Pending suits should be transferred in groups of which the serial numbers are consecutive.

(c) Preference for transfer should be given in each class to suits in which evidence has not been recorded over those in which any witnesses have been examined; and care should be taken that connected or analogous suits are not tried by different Courts. Cases in which commissions have been issued for local investigation, accounts, etc., and in which reports are not likely to be submitted in the near future, and cases which have been stayed or which cannot be taken up for trial for any reason should be excluded when making the list referred to in clause (b) above.

(2) The above principal should also be applied when suits have to be transferred from one permanent Court to another.

(3) District Judges should personally see that these instructions are carried out.

(4) This rule does not apply when additional help is specially given for the trial of some particular cases or appeals.

### 5. Casual leave.

**968.** (1) Casual leave is not provided for in the West Bengal Service Rules, Part I and is a concession to enable Government servants in special circumstances to be absent from duty for short periods without such absence being treated as leave under the West Bengal Service Rules, Part I.

(2) The period of casual leave admissible to an officer shall ordinarily be ten days in a year.

Special Casual leave up to a period of four days in a year may, however, be granted in addition to ten days for religious purposes only and this may be joined either to Sundays or declared holidays;

(3) If in granting ordinary Casual leave the sanctioning authority allows, in any special circumstances and for urgent special reasons, a few days more than ten days, the grant with the reasons must be reported at once to the High Court for the information of Government;

(4) Applications by District Judges and Additional District Judges for casual leave, and for leave of absence during gazetted holidays, under the conditions laid down in the rules issued with the circular No. 771-A, dated the 26th January, 1914, of the Government of Bengal, as amended by the Government of West Bengal, Finance Department Memorandums No. 2555-F., dated the 17th December, 1948, and No. 584-F/F/31./2(27)/49, dated the 21st March, 1949, read with that department Memorandum No. 694/1(125)-F/F/1H-11/49, dated the 1st April, 1949, should be made to the High Court.

(5) Applications by officers of the West Bengal Civil Service (Judicial) for casual leave should be made to District Judges who should dispose of them in accordance with the rules referred to in clause (4) above and maintain a register of such leave in the prescribed form [No. (R)41]. Such applications for casual leave by the Judges, the Registrar and the Deputy Registrar, Court of Small Causes, Calcutta, should be made to the Chief Judge and disposed of by him.

(6) The fact that a maximum has been fixed for the amount of casual leave which may be taken within a year, does not mean that an officer is entitled to take the full amount of casual leave as a matter of course.

(7) Casual leave must not be combined with vacation.

(8) If any reply regarding an application for casual leave is required to be sent by telegram it must be at the expense of the officer concerned. Messages in such cases should always be prepaid for reply.

**969.** (1) Absence of a District Judge or an Additional District Judge or a Subordinate Judge or a Munsif from Court for a short period on account of temporary indisposition during which he carries on his current and routine duties as far as possible from his sick room, will not be treated as any kind of leave, but the fact with the period of absence should be promptly reported by District and Additional Judges to the High Court and by Subordinate Judges and Munsifs to the District Judge.

(2) If however, the period of absence is prolonged, the High Court, in the cases of District and Additional District Judges, and the District Judge in the cases of Munsifs and Subordinate Judges, will use its or, as the case may be, his, discretion as to whether it should be treated as any kind of leave regard being had to its length and consequent effect on the working of the Court.

(3) The number of days on which each such officer was absent owing to temporary indisposition or other cause should be noted separately in the quarterly statement in form No. (S)7, Volume II.



**6. Leave under the West Bengal Service Rules, Part I.**

**970.** District Judges and Additional District Judges applying to Government for regular leave on medical grounds or otherwise should invariably forward a copy of their application for the information of the High Court.

**971.** Applications for leave from Subordinate Judges and Munsifs should be submitted, in duplicate, one copy being invariably forwarded by District Judges to the High Court direct with their recommendation and the other through the Accountant-General, West Bengal.

**972.** Applications for leave or for extension of leave should be accompanied by full details explaining the necessity for the leave, in order to enable the High Court to judge if leave in any case is justified, and in cases of leave, other than casual leave or leave on medical certificate, due notice which in ordinary cases should not be less than one month before the date from which the leave is required should always be given.

**973.** An application for leave from a Subordinate Judge or a Munsif, be it leave on or without medical certificate, requiring the appointment of a substitute in his place, must invariably be accompanied by a statement showing the state of the files of the superior Courts or of the munsifi, as the case may be, on the date of the application, the state of the file of the applicant for leave being shown separately in the statement.

The statement should be submitted in the forms shown in the Appendix to this chapter, the one marked A being used in the case of Munsifs and the other marked B in that of Subordinate Judges.

**974.** When leave is required by a Munsif or a Subordinate Judge in a case of emergency, he should, in the first instance, move his District Judge, if necessary by telegram. The latter should in turn make his recommendations to the High Court by telegram stating specifically if a substitute is necessary or not.

**975.** A District Judge should not except in emergencies permit a Munsif or a Subordinate Judge to leave his station or avail himself of leave in anticipation of the leave being granted, without the previous consent of the High Court.

**976.** (1) When an officer, who has been allowed leave for a period howsoever short, desires to cancel the whole or any portion of it and resume his duties, he shall give notice of his intention to the High Court in proper time and await its orders before rejoining.

(2) Permission to return to duty before the expiration of leave should not be given by District Judges to any judicial officer without the orders of the High Court, previously obtained.

**977.** (1) In every application for leave or extension of leave on medical grounds, it must be clearly and invariably stated whether or not the leave applied for is on medical certificate under the West Bengal Service Rules, Part I. If it is an application on medical certificate, it must be accompanied by a certificate and statement of the applicant's case in the form prescribed by rule (9) in Appendix 8 to the aforesaid Rules. District Judges should, before forwarding applications for leave on medical certificate, to the High Court, see that these requirements have been fulfilled.

(2) Except in cases covered by and conforming to the requirements of rule (13) in Appendix 8 to the aforesaid West Bengal Service Rules, Part I, appearance before the Medical Committee of the State is compulsory before leave or extension of leave on medical certificate is granted.

**978.** (1) All officers of the West Bengal Civil Service (Judicial) about to proceed on leave of any description for one month or more (the vacation included) shall, before they quit their stations, furnish the heads of their departments with their addresses while on leave.

(2) District and Sessions Judges are requested to report invariably to the High Court their own leave addresses and the leave addresses of the Subordinate Judges and Munsifs of their district prior to departure from their station on leave of any description for a month or more (the vacation included)

**NOTE.**—Officers of the West Bengal Civil Service (Judicial) should also leave their addresses with the District Judge whenever they proceed on leave for any period less than a month, or avail themselves of gazetted holidays or are being transferred to another station. District Judges should in similar circumstances notify to the High Court their own addresses.

## APPENDIX.

**Form A.**

(Munsif's files.)

Date.

Original suits.		S. C. C. suits.	
Total pending.	Year old.	Total pending.	6 months old.

**FORM B.**

(Files of superior courts.)

**Date**.....

[illegible]

## CHAPTER 49

### Inspection of courts and offices.

979. District Judges are required to inspect personally the Courts and District Headquarters one every year and

Page 318, Rule 979—

No. 73.

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ed. A

Substitute "once" for "one" in line 2 of the rule.

[No. 73, dated the 27th November. 1963. File No. 4R—25 of 1962.]

NOTE.—The District Judge cannot delegate his power of inspection to the Additional Judge or any other judicial officer. If he is unable to inspect personally at the proper time on account of his being occupied with the hearing of any case of unusual length or for any other good reason he should explain the circumstances and take orders of the High Court on the subject.

980. If extraneous help in connection with the inspection be indispensable on any occasion which should be rare, the District Judge may take the assistance of a ministerial officer, preferably not his Sheristadar or Nazir, from any office at district headquarters or from the office under inspection, for the purpose of collecting materials from registers, account books, etc., checking totals and stocks. The ministerial officer whose assistance is taken by the District Judge must not be required to look into the diary, order-sheet, records of cases etc., nor shall he offer any remark connected with the judicial work, judicial procedure or judicial administration. The name and office of the ministerial officer whose assistance is taken should always be stated in the letter forwarding the inspection report.

981. The district Second Room should be thoroughly inspected at least once in each year by the District Judge himself, or should he be unable to do so for any reason which should be explained, by such gazetted officer, preferably other than the Judge in charge of the record room, as he may depute for the purpose. An inspection by the District Judge personally must however be made at least once in two years and notes of such inspection shall be submitted to the High Court in form No. (M)7A as soon as possible after the inspection.

982. If any seeming defects or irregularities are noticed in the course of the inspection, the officer concerned should be given an opportunity to explain them on the spot.

A copy of the notes on inspection should, as soon as possible after the inspection, be sent to the presiding Judge of the Court concerned or the Judge in charge of the District Record Room, as the case may be, for his information and guidance with such instructions within the scope of his authority as the District Judge may think fit to give.

NOTE.—When an officer has left the station before or after the inspection and defects and irregularities are found in his work, a copy or extracts from so much of the inspection report as concern him should be forwarded to him wherever he may be.

984. If there is in the notes of inspection any comment on some irregularities or defects on which the officer concerned desires to offer any explanation, he should send it to the District Judge who shall forward it to the High Court with his remarks thereon.

(1) It is not necessary to enter in the inspection report every mistake that may be found though all such mistakes should be intimated to the presiding Judge of the Court inspected or the Judge in charge of the District Record Room as the case may be.

(2) The list of questions as given in the form of inspection report [forms No. (M)7 & No. (M)7A] is not intended to be exhaustive nor is it intended that inspection should be restricted to those questions only. It is open to the District Judge to append a separate report giving the result of the examination of any branch of work which, in his opinion, demands detailed examination.

(3) Collateral questions or matters of importance (e.g. the need for modification or introduction of a rule) or questions of doubts or difficulties relating to rules and orders of the High Court, should not be discussed in the inspection reports. Such matters should form the subject of separate communications to the High Court.

**986.** (1) Along with the inspection report in form No. (M)7 or (M)7A. as the case may be, the District Judge shall submit to the High Court an extract from the report indicating the defects found, in form No. (M)7B. with the heading and the columns 1, 2 and 3 thereof duly filled in.

(2) On receipt of the defect extract in form No. (M)7B from the High Court with the Court's comments, suggestions or orders, the District Judge will cause column 5 of it to be filled in and then send it to the presiding officer of the Court concerned or the Judge in charge of the District Record Room, as the case may be. The District Judge will in due course report to the High Court, in brief, the action taken on orders etc., recorded in column 4, after obtaining a report from the officer concerned.

**987.** Every subordinate Court and the District Record Room shall maintain a guard file which shall contain the defect extracts referred to in clause (4) of the last preceding rule and all inspection and audit reports if any, together with connected correspondence and shall show the action taken to remedy the defects and irregularities that have been noticed in such reports. Every guard file shall have an index in form No. (M)46. An inspecting Judge should call for the file and see what action has been or is being taken in regard to these defects and irregularities and note any undue delay or omission in this respect.

**NOTE.**—Defect extracts should be taken off the guard file for destruction after 3 years from the date of the last order therein and a corresponding note made in the index. Similar notes should also be made in the index when inspection and audit reports are removed for destruction (*vide* Rule 481, *ante*). Should one guard file be found inconvenient for reasons of bulkiness, additional files may be opened and maintained in the prescribed manner.

**988.** (1) Every Subordinate Judge and Munsif must inspect once a year the office attached to his Court and any other office of which he is in charge. A report on such inspection should be submitted to the District Judge, who should deal finally with any points that arise, unless their nature and importance is such that in his opinion, they should be referred to the High Court. An intimation shall, however, be sent to the High Court by the District Judge to the effect that the report of inspection of a presiding officer has been received by him, and that proper instructions have been given by him on any defects, etc., noticed.

(2) Every Subordinate Judge and Munsif shall inspect his office immediately after taking over charge in order that he may be in a position to discover any defects which may exist and take immediate steps for their removal.

Every District Judge and Additional District Judge, should inspect the offices of his own Court once a year, or, if this be not possible an inspection should be made by some gazetted officer deputed by the District Judge. An inspection by the District Judge or Additional District Judge must, however, be made at least once in every two years. The District Judge or Additional District Judge should deal finally with any points that arise, unless their nature and importance is such that in his opinion they should be referred to the High Court and in any case a copy of the report of inspection should be sent to the High Court.

990. In course of his inspection, the District Judge will take at random a few days from the presiding Judge's diary, go through in detail with reference to the records of every case or proceeding entered for those days, all the work that was done, and note in the inspection report against the relevant question how the presiding officer spent his time and in what manner business was conducted.

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